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Current Topics.

Sheriff of Chancery.

THE announcement that the office of Sheriff of Chancery in Scotland, which has been rendered vacant by the recent death of Sir MATTHEW POLLOCK FRASER, K.C., has, no doubt on grounds of economy, been conjoined with that of the Sheriff of the Lothians and Peebles, is a fresh reminder, not only of the fact that the Sheriff in Scotland, in this differing from his English confrere, is for the most part a judicial functionary, but also that the term "Chancery," with which we are so familiar here, is not altogether unknown north of the Tweed, although there it has not that extensive connotation that it bears in England. At one time, Scotland had its Lord Chancellor, but the office was abolished at the union of the Parliaments, there being, it was said, "no further use for the judicial part of the office," and the term "Chancery" survived only to a very limited extent, chiefly, if not entirely, in connection with the issue of "Brieves," in connection with property rights and other matters. The office of Sheriff of Chancery was created by the Service of Heirs Act, 1847, the qualification being the same as that for the office of sheriff of a county in Scotland, that is, membership of the Scots Bar, and his duties were to hear and adjudicate upon petitions by persons desirous of being served heir to a person deceased; in other words, for completing a title to a deceased person, in respect of heritable property. The office of Sheriff of Chancery carried with it a modest salary, and on that account, as well as on other grounds, its abolition as a separate appointment, although foreseen, will be regretted by members of the Scots Bar.

The Bar: Annual General Meeting.

PRESIDING at the annual general meeting of the Bar last Tuesday, the Attorney-General noted with satisfaction, as indicative that the Council had done its work to the satisfaction of the Bar, the absence of any motion alleging sins of omission or commission on the part of that body. The adoption of the annual statement (the contents of which, so far as they are of special interest to solicitors, were indicated in our last issue) was moved by the Chairman of the Bar Council, Sir HERBERT CUNLIFFE, K.C., who noted that there was nothing very outstanding in what had taken place during the past year, but indicated that it must not be assumed that the contents of the annual statement constituted anything like a complete record of the Council's activities. It was observed that mistakes which were made by members of the Bar were frequently made by men who had not taken advantage of the opportunity to read in Chambers, and the extreme importance—indeed the necessity—of this course was duly emphasised. The speaker also touched upon the subject of disappointed litigants, and indicated that the complaints of such when investigated were almost invariably found to be entirely groundless. The annual statement was carried on a show of hands.

The Lord Chancellor on Magistrates' Retirement.

MANY of our readers will recall an address given by the Lord Chancellor at the annual meeting of the Magistrates' Association last autumn and certain statements contained therein concerning the retirement of justices who for one reason or another may be no longer so capable as formerly of discharging their functions on the bench. A circular which has recently been sent to all chairmen of advisory committees, clerks of the peace, and clerks of petty sessional divisions, intimates that as a result of this address much correspondence has reached the Lord Chancellor, who accordingly has made a more precise statement of his views than was possible on that occasion. The retention upon the commission of the names of justices who find themselves unable regularly to discharge the duties of a magistrate at quarter sessions or petty sessions was adverted to in the course of the address, and the circular points to the embarrassment caused by the presence on the lists of the names of some who are either wholly or in part ineffective through age, infirmity or non-residence—an embarrassment which must be experienced by the advisory committees in making a just estimate of the number of magistrates required to discharge the work in considering the recommendations of the names of those to be added to the commission and is experienced by the Lord Chancellor in considering the lists submitted. As to non-residence, the circular points out that under s. 157 (3) of the Municipal Corporations Act, 1882, justices of cities or boroughs are disqualified from acting as such unless they reside in, or within seven miles of, the locality, or occupy property therein; and it is urged that where a magistrate, whether of a city, borough, or county, has removed from the locality for which he was appointed, and has severed his connection with it, so that he can no longer discharge for that area any of the functions of a justice of the peace, it is his duty to resign. It is emphasised in this connection that a justiceship of the peace is not, and cannot in any circumstances

be regarded as if it were purely of the nature of a title or honour, and that the office, while undoubtedly ancient and highly honourable, is not one which ought to be conferred or held as a reward for services, or for the mere purpose of enhancing the dignity of its possessor.

Supplemental List.

THE circular also deals with the case of those who, though still residing in the area for which they were appointed, feel themselves unable or unfit, either through advancing years or infirmity, to attend regularly at the court, or to sit for long periods on the bench. It is recognised that such may nevertheless be able on occasion to perform useful work of a ministerial character, and the Lord Chancellor suggests that such magistrates should indicate to the Clerk of the Peace and to the Clerk of the Petty Sessional Division their desire that their names should be placed upon a supplemental list. Such would no longer be summoned to attend quarter sessions or petty sessions, but they would remain magistrates, would forego none of their rights and privileges, would be capable of discharging, in common with those whose names were on the active list, many of the useful functions of a magistrate, and would continue to take their part on ceremonial occasions. This course is specially recommended to those who have become conscious of some impairment of sight or hearing, though it is not desired to discourage voluntary resignations by those anxious to free themselves from the responsibilities and burden of the office. Moreover, the supplemental list is not intended for those who never attend the court and have no valid reason for failing to perform an important part of their duties. Such, it is said, should resign from the Commission in accordance with the recommendations of the Royal Commission on the Selection of Justices. Those who are conscious of the merits and favour the retention of an unpaid magistracy will welcome the foregoing observations as calculated to remove from the system certain deficiencies which are not by any means necessarily associated with it.

Road Safety: The Prevention of Skidding.

ONE of the most fruitful causes of road accidents is the skidding of mechanically propelled vehicles, and although in many cases the resulting fatalities or injuries must be attributed to the driver's incompetence either from failure to appreciate the circumstances in which this form of lack of control is likely to arise or from an inability to take the appropriate countering measures, there remains a residuum of cases which must be set down to incalculable factors. Investigations into the causes of skidding are, therefore, of prime importance, and the pronouncements of the Road Research Board, which has just issued its third annual report (H.M. Stationery Office, price 3s. net), are of no little interest. The comparative remoteness of the subject from questions of direct legal import would render anything more than the briefest summary treatment inappropriate here, but one or two matters of special interest may, not inappropriately, be mentioned. First, it appears that during the year ended in March, 1937, with which the report deals, systematic tests concerning the comparative slipperiness of various kinds of road surfaces have been made at higher speeds than ever before, and the provision of a new high powered engine on the motor cycle and sidecar equipment used for the purpose has enabled trials to be conducted up to the speed of fifty miles an hour—twenty miles an hour higher than the previous maximum. The results so far achieved suggest that for most road surfaces, though not all, the risk of skidding at the higher speeds is not greatly increased, the skidding co-efficient tending to reach a steady value between thirty and fifty miles an hour. Plans are being made for carrying out tests at even higher speeds. The skidding characteristics of road surfaces are said to be largely determined by the total area of contact between the tyre and the road and the number of isolated individual points of contact in this area. In the latter connection the report emphasises the importance of these isolated areas being surrounded by channels of sufficient size to enable the liquid on wet roads to escape through them. Another point of some interest is the suggestion that the slipperiness of roads is increased by fog. For further particulars concerning these and other matters readers must be referred to the report itself.

Acquisition of Land by Local Authorities: Valuation.

MATTERS of wider interest than local government administration are involved in a recent circular (No. 1665) addressed by the Ministry of Health to local authorities on the subject of the assistance given by district valuers in the valuation of land proposed to be purchased by local authorities; for vendors of such land frequently require the advice and aid of practitioners. The changes in practice indicated by the circular should, therefore, be accorded brief mention here. Hitherto, the MINISTER OF HEALTH, when considering an application for sanctioning a loan for such purchases, has had regard to district valuers' recommendations when the purchase price exceeded £1,000, or when the purpose for which the land was bought was grant aided. "It may, however, happen," the circular states, "that the local authority have already entered into a provisional agreement with the vendor of the land, and that the price named in the agreement exceeds that recommended by the District Valuer. The provisional agreement has effect only where the Minister consents to the loan required to cover this price, but the fact that it has been made may militate against the success of negotiations undertaken in the light of the district valuer's recommendation and may prejudice proceedings taken before an Official Arbitrator." The MINISTER OF HEALTH has been in consultation with the Board of Inland Revenue, and it has been decided that, when the consent of the former to a loan is required in respect of the purchase of land for a purpose which is not grant aided, the district valuer shall, at the request of the local authority, furnish a recommendation as to the price of a property, whatever its value, and in addition may (1) if the price exceeds £1,000, and acquisition without recourse to compulsory powers is, in his opinion, improbable, make a final effort to come to terms by direct negotiation, and (2) where compulsory powers have been obtained and the case proceeds to arbitration, appear before the official arbitrator as an expert witness in support of his valuation. The advice of the district valuer should, therefore, be sought by a local authority prior to the opening of negotiations for the purchase of a particular property whether the purpose for which it is required is grant aided or not, and a local authority should not, without previous reference to the Ministry of Health, enter into any agreement which if confirmed, would bind them to pay a price exceeding the district valuer's recommendation or impose upon them onerous conditions which have not been taken into account by the latter. If negotiations with the owner for purchase at a price within that recommended fail, the local authority should consider taking any steps available to them to acquire the property compulsorily.

Small Holdings and Allotments.

IN a recent issue some notes were given in this column concerning the prospects of future legislation for the benefit of agriculture. This week it may not be out of place to make short reference to a branch of agricultural activity prompted by past legislation. The Small Holdings and Allotments Acts, 1908 to 1931, enable local authorities to acquire land for its utilisation as small holdings or allotments. The former are agricultural holdings which exceed one acre and either do not exceed fifty acres, or, if of greater area, do not exceed £50 in annual value. The latter are small plots of land not exceeding five acres and used exclusively for agricultural or horticultural purposes. The report on the work of the Land Division of the Ministry of Agriculture and Fisheries for 1936, which has recently been issued (H.M. Stationery Office,

price 1s. net), shows a slight decrease in the area of new land acquired by local authorities for these purposes compared with the figure for the preceding year, though, compared with that for 1934, the figure for 1936 (6,780 acres) shows the substantial increase of more than one-third. There is, however, a large demand for further land, the number of applicants either approved and awaiting holdings, or awaiting interview at the end of the year being nearer five than four thousand, though the report intimates that the number of applicants on councils' lists cannot definitely be accepted as a true index of the extent of this demand. Of the new land acquired during 1936, some 562 acres were obtained in circumstances not involving a loss and, therefore, without the necessity of obtaining the Ministry's consent. The rest was acquired after the Minister's approval on submission of proposals and estimates. In such circumstances the Minister is empowered to undertake to contribute up to a maximum of seventy-five per cent. of the estimated loss in each year. The report records a continued decrease in allotments in urban areas. This is mainly attributed to the demand for land for other purposes, particularly housing, which in many cases creates a shortage of land available for allotments. It is stated that the Ministry's Land Commissioners have continued to urge on allotment and town planning authorities the importance of providing greater security of tenure for allotment holders by the purchase of land, or its reservation in town planning schemes, for allotment purposes, and it is much to be hoped that this appeal will not go unheeded.

Local Government Superannuation Act, 1937: Rules, Circulars, Etc.

THE attention of readers should be drawn to a number of publications recently issued from the Ministry of Health in connection with the Local Government Superannuation Act, 1937. A proviso to s. 2 (3) of that Act enables Superannuation Joint Committees established by a combination scheme in force under s. 5 of the Local Government and Other Officers' Superannuation Act, 1922, to make a new scheme in substitution for an existing scheme, and one of the publications referred to is a model combination scheme under the said proviso. The modification of existing local Act schemes in order that they may comply with the requirements of s. 26 (1) of the Act is the subject of a model form of scheme and circular (No. 1663 S/4) which contains in an appendix a discussion of various points arising on the scheme. The circular states that, if the authority so desire, arrangements will be made for a discussion with the Minister's officers of any point of difficulty that may arise. Such schemes are required to be made before 1st April, 1938, with the object of securing that persons falling within the classes mentioned in para. (*a*) of the foregoing sub-section shall be brought within the ambit of a local Act superannuation fund on and after the appointed day (1st April, 1939). Two sets of draft rules—the Local Government (Surrender of Superannuation Allowance) Rules, 1937, and the Local Government Superannuation (Administration) Regulations, 1937—are the subject of a further circular (No. 1671 S/6). The former rules, which apply only to contributory employees under the Act of 1937, and accordingly not to employees who retire before 1st April, 1939, govern the conditions under which an employee may surrender a part of the superannuation allowance payable in order to secure the payment of an annuity to a spouse (see s. 9 of the Act). The latter, which have been made by the Minister of Health under s. 36 (6) of the Act, contain provisions for the ascertainment of status of persons employed by local authorities with the object of deciding which of these will be superannuable. They are dated 21st December, 1937, and came into immediate operation. All the foregoing publications are, of course, part of the administrative preparation required to bring the Local Government Act, 1937, into operation.

Irregular Marriages in Scotland.

A PARAGRAPH in *The Times* recently recorded that "forty-eight irregular or civil marriages took place before the Sheriff at Glasgow" on the last day of 1936, the highest number, it was added, on any one day since the War. Except to those familiar with the different methods by which in Scotland, marriage may be constituted, this statement is apt to mislead. Such marriages are described as irregular, each of the parties merely declaring that he (and she) takes the other as husband and wife. By Scots law, such a marriage is perfectly good, but the difficulty in the past has been to establish its validity evidentially. At one time a curious proceeding was resorted to for establishing the fact of the marriage. This was to obtain from the procurator-fiscal a petition bearing to proceed at his instance asking the court to impose the statutory penalty for irregular marriage, and as the parties confessed and were fined, an extract of the sentence served as a record of the marriage. This method was abolished by an Act of 1916, and what now is done is to present a joint application to the Sheriff, who, in Scotland, corresponds in large measure to the County Court judge in England, for a warrant to register the marriage. On its being proved before him that the marriage was in fact entered into, he grants a warrant to the registrar of marriages to enter it in his register. Although this is frequently in popular phraseology termed a marriage by the Sheriff, it is quite inaccurate, the Sheriff's function, as stated, being merely to ascertain by proof before him that the marriage was in fact contracted, whereupon he authorises the registrar to register it. A measure, it was understood, was in contemplation to abolish the necessity for this procedure by introducing into Scotland substantially the procedure which obtains in England for civil marriage before the registrar. It is to be hoped that it will be persevered with and thus do away with the antiquated and cumbrous method whereby irregular marriages are in a sense regularised and thus registrable.

Recent Decisions.

IN *McCrone* v. *Riding* (*The Times*, 14th January), a Divisional Court (LORD HEWART, C.J., and BRANSON and HUMPHREYS, JJ.) held that the standard of "due care and attention" the absence of which constitutes an offence of careless driving under s. 12 of the Road Traffic Act, 1930, is an objective, fixed, and impersonal standard, and the case was remitted with a direction to this effect to justices who had dismissed an information charging a "learner" driver under the section on the ground that failure to display such skill as would have been expected of an ordinary driver did not constitute such want of care and attention on his part as amounted to an offence under the said section.

In *The Pass of Leny* (*The Times*, 15th January) the Court of Appeal (GREER, SLESSER and SCOTT, L.JJ.) declined to disturb a judgment of LANGTON, J., who had come to the conclusion on the evidence before him that petroleum which caused a fire in Poole Harbour did not come from a ship belonging to the defendants. GREER, L.J., intimated that the plaintiffs had entirely failed to discharge the onus of proving that it was impossible that there could be any way of accounting for the fire except the negligence or misbehaviour of those on *The Pass of Leny*.

In *Evans* v. *Cross* (*The Times*, 19th January), a Divisional Court (LORD HEWART, C.J., and BRANSON and HUMPHREYS, JJ.) reversed a decision of justices and held that white lines on highways were neither "devices" within the meaning of s. 48 (9) of the Road Traffic Act, 1930, nor traffic signs within that section, so as to expose a person failing to observe them to penalties for an offence under s. 49 for failing to conform to an indication given by a traffic sign. LORD HEWART, C.J., intimated, however, that one ignoring the white line might be guilty of careless or even dangerous driving.

Criminal Law and Practice.

MEANING OF "SUSPECTED PERSON."

VALUABLE guidance on the meaning of that somewhat obscure phrase "suspected person" in s. 4 of the Vagrancy Act, 1824, is contained in the judgments of the Divisional Court delivered on 14th December, 1937, in *Rawlings* v. *Smith*, 54 T.L.R. 255. The section in question provides that every suspected person or reputed thief frequenting certain specified places or any street or place of public resort with intent to commit a felony shall be punishable as a rogue and vagabond. In this case the magistrate had acquitted the defendant on the ground that he was not within the category of suspected persons. The only evidence of this that was worthy of consideration was evidence that the defendant had been seen at various times of the day to be looking into and trying the doors of motor cars.

The magistrate acquitted the defendant, acting on the belief that the recent decision in *Ledwith* v. *Roberts* [1937] 1 K.B. 232, had the effect of making the decision in *Hartley* v. *Ellnor* (1917), 117 L.T.R. 304, bad law. The latter was a case where the accused had been kept under observation for a period of about forty minutes and during that period was seen to be mingling with various crowds who were boarding tramcars and tapping the pockets of individuals in the crowds. There was no evidence of any previous offence against the accused. The justices had dismissed the charge on the ground that there was no evidence of previous convictions or previous bad character. Avory, J., said: "A person may be a suspected person even though he is not a reputed thief, and a person may be a suspected person on a particular day, even though he has not been previously convicted, or even though he has not had a reputation for bad character in the past." The court held that there was ample evidence on which the justices could have found that the respondent was a suspected person and also for the inference to be properly drawn that he was frequenting a street on the day in question with the intention of committing a felony.

The Lord Chief Justice said in *Rawlings* v. *Smith*, *supra*, that the effect of *Hartley* v. *Ellnor*, *supra*, was that it was not necessary that the accused should have acquired the status or fallen into the category of suspected persons upon some day earlier than the day which is in the information. He then examined the decision in *Ledwith* v. *Roberts*, *supra*.

That case was an action for false imprisonment. Two police officers had kept two young men under observation for twenty-five minutes and had then arrested them. The Court of Appeal held that the Vagrancy Act, 1824, s. 4, did not give a constable power to arrest any citizen without a warrant, unless such person had come into the category of either suspected person or reputed thief before his arrest. The Lord Chief Justice in *Rawlings* v. *Smith* stressed that in *Ledwith* v. *Roberts* one and the same act had been relied upon by the prosecution "both as to giving rise to the suspicion which was to bring the defendants into the class of being suspected persons, and as being the act which occasioned the arrest." As the Lord Chief Justice pointed out, "He (i.e., the accused) may not be put into the category of suspected persons solely by the act which causes him, under arrest, to be charged with loitering as a suspected person with intent to commit a felony."

The Court of Appeal has now taken the view that *Hartley* v. *Ellnor* has not been overruled by *Ledwith* v. *Roberts*. Certainly Greer, L.J., in the latter case said that the decision in *Hartley* v. *Ellnor* was plainly right, although both Greene and Scott, L.JJ., expressed the opinion that *Hartley* v. *Ellnor* was wrongly decided, because apparently in their opinions a period of forty minutes' previous observation was not sufficient to bring a defendant into the category of suspected persons. This opinion, however, was purely *obiter*, as the court in *Ledwith* v. *Roberts* held that *Hartley* v. *Ellnor* was no authority for the proposition in support of which it was cited.

The most that can be said now is that the legal proposition which *Hartley* v. *Ellnor* supports is correct, even though the magistrates may have come to an unsatisfactory conclusion on the facts. Whether there is antecedent conduct bringing a defendant into the category of suspected persons is entirely a question of fact for the magistrates. The learned magistrate at Marlborough Street, on 11th January, in *R.* v. *Stocker and Another*, had a similar charge before him involving two youths who had been seen to be trying the doors of motor cars. In that case the magistrate found the boys guilty, although they had been under observation for thirty-five minutes, but not before he had asked the police witness the very pertinent question: "When did you first become suspicious after that?" Facts in this class of case vary considerably, and an efficient tribunal can usually elicit without difficulty whether previous behaviour is of such a character as to make the accused a suspected person.

POLICE AS ADVOCATES.

IN a recent prosecution at Wealdstone for exceeding the speed limit (*The Times*, 8th January, 1938), the police-constable who had stopped the defendant motorist was about to cross-examine him when the latter's solicitor submitted that only the police-sergeant who laid the information was allowed to cross-examine, unless the police were legally represented. The police-sergeant said that to overcome that every police officer who took out a summons would have to come to the court and make a personal application, to which the defending solicitor replied: "That is the law." The chairman said: "We allow your objection this time. It must not be taken as a precedent."

The practice of permitting police witnesses to conduct cases as advocates has frequently been unfavourably criticised by judges in the past. In *Webb* v. *Catchlove*, 50 J.P. 795, Lord Denman said that he thought it a most unfortunate practice for police officers to be allowed to act the part of advocates in courts of justice. Hawkins, J., added that he thought it was a bad practice to allow a policeman to act as an advocate before any tribunal, "so that he would have to bring forward only such evidence as he might think fit and keep back any that he might consider likely to tell in favour of any person placed upon his trial." On the other hand where it was sought to upset a conviction on the ground that a police witness had examined witnesses for the prosecution, Lord Alverstone, C.J., said: "I quite agree that if the police officer advocate is a witness, the expressions of judges disapproving of police advocacy are applicable. But there are cases where there may be no objection to the facts being brought before the court by a policeman. Police advocacy is, however, no objection to a conviction. It is not suggested that any injustice was done to the appellant through the case being conducted by the officer" (*May* v. *Beeley* [1910] 2 K.B. 722). Justices have a right, however, to disregard statements made by any persons who are not qualified to present cases, as they did in *Palmer* v. *Crone* [1927] 1 K.B. 804, where a defendant's daughter appeared on behalf of the defendant to a summons for rates, and the justices refused to hear her.

Under ss. 12 and 14 of the Summary Jurisdiction Act, 1848, the prosecutor or complainant, on an information, is given the right to conduct his case before the justices, and this right is not affected by the reference to "counsel or solicitor on his behalf" in s. 12 (*Duncan* v. *Toms*, 51 J.P. 631). It is, therefore, perhaps a slight exaggeration to say that it is the law that a police witness may not conduct the case (see *May* v. *Beeley*, *supra*), but it is right that it should be emphatically pointed out to magistrates that it is a practice which has been very unfavourably criticised by judges.

Costs in Remitted Action.

On 8th December last the Court of Appeal decided *Goadby* v. *Orridge*, which deals with a question of some importance to solicitors, namely, the jurisdiction of a county court judge to order upon what scale the costs of the proceedings in the High Court are to be taxed, where an action has been remitted to a county court.

In *Goadby* v. *Orridge* the plaintiff ultimately was successful and recovered £60 in the county court upon a claim founded in tort, together with the costs of the proceedings both in the High Court and the county court. The county court judge (His Honour Judge Ruegg, K.C.) awarded the plaintiff the costs throughout on Scale C of the county court scale. The plaintiff appealed to the Court of Appeal, on the ground that he was entitled to the costs of the proceedings before remission, on the High Court scale.

Now *Goadby* v. *Orridge* was remitted under s. 46 of the County Courts Act, 1934, through the failure of the plaintiff to comply with an order for security for the defendant's costs, but no order was made as to the costs in the High Court.

In these circumstances the Court of Appeal had to construe ss. 73 and 47 of the 1934 Act, which replace and substantially re-enact the familiar ss. 12 and 11 of the County Courts Act, 1919.

So far as material s. 73 is in the following terms :—

" Where an action, counter-claim or matter is ordered to be transferred—

" (*a*) from the High Court to a county court . . . the costs of the whole proceedings both before and after the transfer shall, subject to any order made by the court which ordered the transfer, be in the discretion of the court to which the proceedings are transferred, and that court shall have power to make orders with respect thereto and as to the scales or columns on or under which the costs of the several parts of the proceedings are to be taxed, and the costs of the whole proceedings shall be taxed in that court :.

" Provided that, as regards so much of the proceedings in any action transferred from the High Court to a county court as take place in the High Court before the transfer—

" (i) the costs thereof shall be subject to the provisions of section forty-seven of this Act ; and

" (ii) the powers of the High Court or judge thereof under sub-section (3) of that section to make an order allowing costs on the High Court scale, or on or under any county court scale or column, shall, subject to any order of the High Court or the judge by whom the transfer was ordered, be exerciseable by the judge of the county court."

And s. 47 is, so far as material, in the following terms :—

" (1) Where an action is commenced in the High Court which could have been commenced in a county court, then, subject to the provisions of subsection (3) and subsection (4) of this section—

" (*a*) if the plaintiff recovers a sum less—

" (i) in the case of an action founded on contract, than forty pounds ; or

" (ii) in the case of an action founded on tort, than ten pounds ;

he shall not be entitled to any costs of the action ; and

" (*b*) if the plaintiff recovers—

" (i) in the case of an action founded on contract, a sum of forty pounds or upwards but less than one hundred pounds ; or

" (ii) in the case of an action founded on tort, a sum of ten pounds or upwards but less than fifty pounds ;

he shall not be entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in a county court.

* * * *

" (3) In any such action as aforesaid, whether founded on contract or tort, the High Court or a judge thereof (or where the matter is tried before a referee or officer of the Supreme Court, that referee or officer), if satisfied—

" (*a*) that there was a sufficient reason for bringing the action in the High Court ; or

" (*b*) that the defendant or one of the defendants objected to the transfer of the action to a county court ;

may make an order allowing the costs or any part of the costs thereof on the High Court scale or on such one of the county court scales and under such one of the columns in the scale as he may direct.

* * * *

" (5) This section applies only to the costs of the proceedings in the High Court . . . "

* * * *

It will be observed that under the first part of s. 73 the costs of a remitted action are, subject to any order made in the High Court, in the discretion of the county court, this discretion including a power to order the scale upon which the costs are to be taxed. The proviso of s. 73, however, subjects the costs of the proceedings in the High Court, in a remitted action, to the provisions of s. 47.

In *Goadby* v. *Orridge*, the action could have been commenced in the county court, but, as the plaintiff recovered £60 on a claim founded in tort, there was no operative part of s. 47 applicable. In these circumstances counsel for the appellant plaintiff argued, in support of his claim to be awarded costs on the High Court scale before remission, that s. 47 did not deal with the case of the plaintiff recovering £50 or over in tort, that in the High Court a plaintiff awarded costs would be entitled to the High Court scale unless excluded in express terms, and as s. 47 did not so exclude the plaintiff in that case, had the proceedings remained in the High Court, the plaintiff would have been entitled to High Court costs throughout.

Up to that point, as their judgment shows, the Court of Appeal were favourably inclined to the appellant's argument. He had, however, to carry his argument a stage further and accordingly contended that on the above assumption he was entitled to costs on the High Court scale, before the transfer, although the action had been remitted, and that the county court judge had no power to award costs on Scale C.

The Court of Appeal were not, however, prepared to accept this. The judgment of that court was delivered by Sir Wilfrid Greene, M.R., and is at present reported in 1937, 4 All. E.R. 610. The reasons for the decision there given are not very clear. Apparently the basis of the decision was, that although under the proviso to s. 73, the costs were subject to s. 47, where s. 47 was silent, there the first part of s. 73 applied and the county court judge had an unfettered discretion, both to award costs and to indicate the scale on which they were to be taxed.

The obscurity arises from the following passage in the judgment of the court, which is to be found on p. 613 of the report :—

" Even if it be conceded that the High Court judge has no power to deprive a successful plaintiff of High Court costs in a case not falling within the class mentioned in s. 47 merely because the action could have been commenced in the county court, we are of opinion that he is entitled to award only county court costs in any case where, in his opinion, having regard to all the circumstances, the action ought to have been commenced in the county court, and that the county court judge has a like discretionary power with regard to the costs of a remitted action before remission."

It will be seen that the court was drawing a clear distinction between an action which *could have been commenced in the county court* and an action which *ought to have been*

commenced in the county court. The former expression is that which governs s. 47. The latter expression does not occur in either s. 47 or s. 73. Now if the view expressed above is correct, the court considered that, as no indication was given in s. 47 of what was to be done where a plaintiff recovered £50 or over in tort, they were driven back to the general discretion given in s. 73 and that the county court judge was justified in awarding costs on Scale C, providing that he exercised his discretion judicially. If the learned judge based his decision on the view that the action ought to have been commenced in the county court, then his discretion was exercised judicially. Unfortunately the Master of the Rolls is not reported as saying this.

Whatever the grounds of the decision may be, the effect is clear and where a plaintiff or a defendant on a counter-claim recovers £50 or more in tort or £100 or more in contract the county court judge has power to order that the costs incurred before remission shall be taxed on such scale as he thinks fit. Presumably, if he makes no special order they will be taxed on the High Court scale. The expression "recovers" includes anything a plaintiff gets after the commencement of the proceedings, e.g., a sum paid direct to the plaintiff by the defendant after appearance. *Pearce* v. *Bolton* [1902] 2 K.B. 111, or an interim judgment given by the Master when remitting.

The same rule applies to the costs of a successful defendant, or a successful plaintiff on a counter-claim, the criterion then being the amount claimed, s. 73 and C.C.R. Order 47, r. 6 (1) (*b*) and r. 7 (1), and of a successful third party id., r. 6 (1) (*c*) or of a defendant if the third party is unsuccessful id., r. 6 (1) (*d*).

It will be observed that the provisions of s. 47 do not dovetail in with the scales of costs in the county court. For example, under s. 47 (*b*) (ii) the range is from £10 to *under* £50. The scale of costs under C.C.R. Order 47 r. 5 (2) puts £10 on the lower scale, sums exceeding £10 and up to and *including* £20 come under scale A and scale B covers sums exceeding £20 and up to and *including* £50. It seems to follow that where a plaintiff in a remitted action recovers £50 exactly in tort, and is given the costs without more he will tax the costs before remission on the High Court scale. Under *Goadby* v. *Orridge*, the county court judge can give him these costs on scale B, the appropriate scale in the county court. Can the judge award costs on scale C without certifying under Order 47 r. 13, that the determination of the subject matter in dispute was of importance to a class or body of persons or involved a difficult question of law or affects other issues? In other words, does Order 47, r. 13, limit the wide discretion given by s. 73? The rule replaces in substantially the same terms s. 119 of the repealed County Court Act, 1888, and has itself statutory force. It is submitted, that unless he so certifies the judge would not have power to award costs on the C scale in such a case.

Housing Act: Demolition Orders.

[CONTRIBUTED.]

THE present writer craves leave for the benefit of your numerous readers to cross swords with the writer of the article under this heading in your issue of the 18th December, 1937 (81 SOL. J. 1013), which deals with the right of support of a house adjoining one which is the subject of a demolition order, either individual, or under a clearance order.

Two suggestions are to be found in the article in question: (1) That the fact that s. 46 of the Housing Act, 1936, provides that easements over property purchased by the local authority are to be extinguished and compensation paid for them is some argument that the extinction of an easement without compensation under other provisions of the Act. was not one that commended itself to the Legislature; and (2) that the failure to comply with the statutory provision under which landlords of small houses are bound to keep them in habitable condition might be used by an adjoining owner as a ground for a claim based on the removal of support.

To the present writer, s. 46 suggests the precisely contrary argument. The section indicates that the Legislature had easements in mind when the present and the preceding Acts which it replaces were passed, and the very fact that Parliament, whilst specifically providing for extinction of easements and compensation in the case of a purchase, forbore to make any provision in the case of compulsory demolition, surely indicates that there was no intention to make an owner who is compelled to demolish liable to pay compensation. It is, of course, quite clear that easements other than such as must be interrupted by the removal of the house, remain unaffected, e.g., a right of way over or drainage under a covered passage over which a compulsorily demolished house was erected is unaffected by the demolition.

As to suggestion No. (2), the statutory obligation now contained in s. 2 was obviously imposed on an owner for the benefit of his tenant, and there appears to be no ground for suggesting that it creates any duty to a neighbour. The section imposes no greater liability than an express undertaking by the landlord, and even the tenant's wife cannot claim damages for injury resulting from a breach of the landlord's undertaking with her husband to effect repairs (*Cavalier* v. *Pope* [1906] A.C. 428).

Proof of a right to support is a matter of difficulty and it is still doubtful how far length of time can be evidence of a right in a case where the houses had not a common origin. If it is a subject of claim by prescription, it is necessary to show that the owner of the alleged servient tenement knew or had reasonable means of knowing that his house was affording support to the other (*Gatelyn Martin* (1900), 2 Ir. Rep. 269; *Union Lighterage Co.* v. *London Graving Dock Co.* [1902] 2 Ch. 557, C.A.).

If an easement of right to support existed, there is a stronger argument against liability on the part of the owner of a building ordered to be demolished. The owner of an easement can justify entering on the servient tenement to do necessary repairs (*Pomfret* v. *Rycroft* (1669), 1 Wms. Saunders, 321); but, apart from contract or statutory obligation, it is of the essence of an easement that the owner of the servient tenement is not bound to do anything. His duty is merely to give a passive acquiescence to the exercise by the owner of the dominant tenement of his rights including rights of entry for repair when necessary. That the owner of the servient tenement is not bound to repair was laid down as recently as 1925 by Astbury, J., in *Sack* v. *Jones* [1925] Ch. 235. That a penal statute (for such the Housing Act is) should be held to impose a further liability on the unfortunate owner, which he would not be liable to, if an earthquake destroyed his house, ought to be held to be unthinkable.

Admittedly there has been a diversity of opinion on the question raised. In 1933 there were two county court cases (which are referred to in 90 J.P. 821), in one of which, an appeal against an order of demolition, the judge quashed the order on the ground it would render the appellant liable to an action for damages for withdrawal of support, and in the other, an action for damages resulting from the demolition, the judge held there was no liability.

It is submitted that the former of the two decisions was obviously wrong and that the decision would probably have been different if the case of *Yarmouth Corporation* v. *Simmons* (1878), 10 Ch. D. 518, had been cited. That was a decision as to an alleged public way to the beach which was obstructed by a pier erected under statutory authority. Fry, J. (as he then was), in delivering judgment, said: "In the first place it is said that an Act of Parliament cannot take away a right of way except by express words. For that proposition no

authority has been cited, and in my opinion such a proposition is not maintainable. I think that when the legislature clearly and distinctly authorises the thing as a thing which is physically inconsistent with the existence of an existing right, the right is gone because the thing cannot be done without abrogating the right."

It is submitted that these words apply to any easement and that the opinion of that very eminent judge is in accordance with common law and common sense.

It is not suggested that a wall which is actually a party wall between the two houses can be dealt with without liability. Had the Law of Property Act, 1925, with its somewhat peculiar provision for severing the ownership and substituting rights of support, not been passed, a demolition order would not have justified the demolition of the party wall. And it is not considered that the half of the wall, which is now vested in the owner of the house ordered to be demolished, can be taken down without liability to rebuild. The Housing Act could hardly be held to abrogate a liability imposed by the 1925 Act.

Company Law and Practice.

Effect of an Article authorising continuing Directors to act when they are less than the number required for a Quorum.

Articles of a company very frequently provide not only for a quorum of directors who shall be competent to exercise the powers of the board but also a minimum number of directors either by saying negatively that the directors shall not be less than a particular number or positively, though less frequently nowadays, that the business of the company shall be carried on by not less than so many directors. Where such provisions are coupled with an article which provides that continuing directors may act notwithstanding any vacancy, it is by no means clear whether continuing directors who cannot form a quorum are so entitled to act.

There is no doubt, in view of *In re Scottish Petroleum Co.*, 23 Ch. D. 413, to which I shall shortly refer, that they can continue to act under an article empowering continuing directors to act as long as there remains a quorum, and the doubt whether they may so continue to act when their number falls below that of a quorum has been recognised in Table A, for Art. 83 of Table A provides as follows: "The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose." In the shorter form of such an article this doubt continues to exist.

In *In re Scottish Petroleum Co., supra*, the articles provided that there should be not less than four directors, of which two directors should form a quorum, and that the continuing directors might act notwithstanding any vacancy in the board. Prior to the first meeting of directors two of the four directors named in the articles had resigned, but it was held that the other two constituted a valid and effective board being sufficient to constitute a quorum.

The opposite result was arrived at in *Sly, Spink & Co.* [1911] 2 Ch. 430. In that case there were similar provisions in the articles that the number of directors should be not less than four, that three directors might be a quorum and that the continuing directors might act notwithstanding any vacancy. Two persons were named by the articles to be first directors of the company and they purported to appoint a third director, but it was held that there had never been a properly constituted board as that purported appointment was made by two directors only, which did not constitute a quorum, nor could they be said to be continuing directors. In his judgment Neville, J., says: "Now, although you have to have a board of four, yet under a subsequent article the quorum which could act as provided by Art. 109 was three, and inasmuch as there were three directors in the present case it was said that they had a quorum at all events and therefore were able to transact business. It is quite clear to my mind that the provision that a quorum of the board of four may act does not make legitimate acts by a board consisting of less than four members: you must have a board of four before there can be a quorum. Saying that the quorum shall be three seems to me quite a different thing from saying that three directors can act as a board when the articles themselves provide that the number of directors shall be not less than four."

At first sight these observations would appear to be decisive that where the directors fall below the minimum number fixed by the articles it is impossible to have a quorum even though the continuing directors are equal to or greater than the number fixed for a quorum. The learned judge, however, goes on to say that in this case the two directors appointed by the articles could not be continuing directors, as that phrase must be held to mean directors who continue as such after a full board has once been constituted, but for some reason has fallen below the minimum number. And this of course would decide the question whether or not the two directors in this case were entitled to appoint a third director. The case is authority for the proposition that for the continuing directors to be able to act under an article empowering them to do so notwithstanding any vacancy there must have been at one time a properly constituted board, but it is doubtful whether it is an authority for anything further.

Some grounds for saying that once the directors fall below the number fixed for a quorum they are no longer entitled to act are to be found in two cases, *Owen and Ashworth's Claim* [1900] 2 Ch. 272 and *Newhaven Local Board* v. *Newhaven School Board*, 30 Ch. D. 351. In the former of these cases the articles provided that the number of members of the council of administration of the company should be not less than three, that the continuing council might act notwithstanding any vacancy, and that the council might determine the quorum necessary for the transaction of business. The board was reduced to two, and in proceedings to test the validity of its actions it was held that no quorum had ever been determined in pursuance of the article, and that *In re Scottish Petroleum Co., supra*, applied. At the same time a claim by one Whitworth was also argued which depended on whether or not there had been a valid council of administration. After reporting the arguments, the report contains the following in statement: "[The liquidator was unable to prove that the quorum of directors was ever fixed at three and Whitworth's claim to prove was accordingly allowed]." That evidently suggests that if the quorum had been fixed at three the principles of *In re Scottish Petroleum Co.* would not have applied. In the *Newhaven Case* the question was whether a local board could validly act where it had fallen below the minimum number and also below the number fixed for a quorum. The rules applicable to the board provided that "any casual vacancy occurring by death, resignation, disqualification, failure duly to elect members or otherwise to a local board shall be filled up by the local board out of qualified persons within six weeks or within such further period as the Local Government Board may by order allow . . ." and also "the proceedings of a local board shall not be invalidated by any vacancy or vacancies among the members or by any defect in the election of such board or in the election or selection or qualification of any members thereof." The first rule approximates closely to the kind of article which we have been considering, but the Court of Appeal, in deciding that the acts of a local board composed of

less than the quorum were in this case valid, did so under the latter of those two rules set out above and not on the former.

These indications are, it is true, very slight, but there are evidently good grounds on which it could be argued that they were correct were it not for a decision of the Court of Appeal in *Channel Collieries Trust* v. *Dover Railway Co.* [1914] 2 Ch. 506. Here there was a similar position of a board of directors reduced below the minimum number and also to such an extent that no quorum could be found. The regulations of the company were to be found in the Companies Clauses Consolidation Act, 1845,which contains a provision relating to existing directors, but limited to empowering them to act for the purpose of filling up vacancies. *Sly, Spink & Co., supra,* was not referred to in that case, and it was held that a single director who could not form a quorum could validly appoint additional directors. This decision would apply with equal force to a company which had articles in the same form as the section of the Act and it is not easy to see what difference there can be in principle between a regulation empowering continuing directors to act for a particular purpose such as filling up vacancies and empowering them to act for all the purposes for which a board can act, and certainly no such distinction is drawn in the judgments of the court.

The result must therefore be that the answer to this question must remain in some doubt where there is merely an article empowering continuing directors to act generally and in fact the continuing directors have become unable to make up a quorum, and the only practical value of this article is to emphasise the value of adopting an article in similar form to the Table A article set out above. No difficulties of this sort can arise under that article, and it seems clear that it was drafted to avoid any such difficulties arising.

A fortnight ago I dealt with the practice of forming a small private company and converting it subsequently into a public company when the time had arrived for a public issue and suggested some of the advantages of this course. In the course of that article I referred to savings of stamp duty which might be effected and which I had previously suggested as one of the advantages of this course and a correspondent has written asking how they may be effected. If the company's original capital is of a small amount, it can easily be held by an existing company which it is proposed should transfer its assets to the new company and in this way advantage may be taken of s. 42 of the Finance Act, 1930. This advantage, of course, arises from the fact that the company in its original state is a small one not that it is a private one, and is equally applicable where a public company is incorporated in the first place with a very small share capital as is sometimes done.

A Conveyancer's Diary.

Substitutionary Gifts to avoid Consequences of Lapse.

I HAD recently to advise upon a rather curious will which, amongst other things, raised the question as to whether a legacy which was given to a person who predeceased the testator had been saved from lapse by reason of a clause in the will purporting to be a declaration or expression of intention that there should be no lapse.

I am not at liberty to quote from the will, although the matter was in fact settled, but as it led me to consider the authorities on the subject, I may refer to the matter which is of general interest.

There have been many cases on the construction of wills in which the question has been considered. The main point which seems to emerge is that a mere declaration that a legacy is not to lapse in the event of the legatee dying before the testator will not be effective unless there is a gift of the legacy to some other person to take effect in the event of a lapse. In other words, a gift to a person cannot be prevented from failing where the legatee predeceases the testator, the only real question being whether there has been an alternative legatee named to take in that event.

What I think may be regarded as the leading case is *Sibley* v. *Cook* (1747), 3 Alk. 572.

The material part of the will before the court in that case was as follows: "I give and devise the several legacies and sums following which I will shall be paid to the several persons hereinafter named and that if any of those persons shall die before the same become due and payable I will that they or any of them shall not be deemed lapsed legacies." There followed a number of legacies and one of them was "to Ann the wife of Robert Wensley and to her executors and administrators I give the sum of fifty pounds."

Ann Wensley predeceased the testatrix and letters of administration were granted to her husband.

Lord Hardwicke, L.C., held that the husband was entitled to the legacy as administrator of his wife's estate, there being a gift to the executors or administrators of the legatee in the event of her dying before the testatrix.

His lordship laid down the law as follows: "If a man devises a real estate to J.S. and his heirs and assigns or indicates his intention that if J.S. die before him it should not be a lapsed legacy. Yet unless he had nominated another legatee, the heir at law is not excluded notwithstanding the testator's declaration. So in the devise of a personal legacy to A, though the testator should show an intention that the legacy should not lapse in case A dies before him, yet this is not sufficient to exclude the next of kin."

In *Re Greenwood* [1912] 1 Ch. 392, a testatrix gave her residuary estate to trustees upon trust for conversion and to divide the proceeds in certain unequal proportions between her brothers B and J, her niece A, and her nephew S, and a number of others, and provided that if any of these four persons, B, J, A or S should die in her lifetime without having issue living at her death, his or her share should be held in trust for the others. The will continued: "I declare that if any of them my said brothers B and J my niece A and my said nephew S shall die in my lifetime leaving issue and any of such issue shall be living at my death the benefits hereinbefore given to him or her so dying shall not lapse but shall take effect as if his or her death had happened immediately after mine."

J and S both predeceased the testatrix, leaving issue who were living at her death.

Parker, J., held that there was no lapse and that the gifts to J and S went to their personal representatives respectively.

His lordship said: "In construing a gift of this nature it must be remembered that the general law does not allow a legatee who predeceases a testator to take any benefit under his will. In that event the gift is said to lapse with the consequence that it falls into residue, or if it is itself a share of residue goes to the testator's next of kin. It is not competent to a testator to exclude the application of this rule of law, but the consequences of a lapse can be avoided by the substitution of some other legatee to take the legacy if the event which occasions the lapse occurs. Such a substitutionary gift is often introduced by a direction that the legacy is not to lapse but to go to the substituted legatee. In such a case the introductory words are, of course, quite inoperative unless followed by the substitution of another legatee, but if so followed, are they not construed as an attempt to exclude the rule of law as to lapse, but as indicating the intention to avoid the consequences which a lapse would otherwise entail by substituting another legatee."

Consequently his lordship held that there was in that case a substitutionary gift in favour of the person or persons who would have taken if the deceased legatees had survived the testatrix and died immediately afterwards.

The latest case is *Re Ladd Henderson* v. *Porter* [1932] 2 Ch. 219.

In that case the facts were that a wife, who was of illegitimate birth, having under the trusts of her marriage settlement made in 1892 a general testamentary power of appointment in default of issue, by her will in express exercise of that power and "to the intent that this my will shall take effect, whether I survive or predecease my husband," appointed the residue of the settled funds, after payment thereout of her debts and some legacies, to her husband for his own use and benefit absolutely. Her will contained no other disposition than the appointment. Her husband predeceased her and she died childless in 1932.

Clauson, J., held that even assuming that the testatrix knew that if she died childless and her husband predeceased her, the settlement funds would in consequence of her illegitimacy pass to the Crown, the prefatory words were ineffectual to appoint the residue of those funds to the executors of the husband so as to make it part of his estate, and that the appointment failed by lapse.

It is well therefore to bear in mind in drafting provisions of this kind that prefatory words such as "to the intent that there shall be no lapse," or to that effect, are quite inoperative, as Parker, J., said in *Re Greenwood*, and really it would be better to omit them and simply to introduce a substitutionary gift to take effect should the legatee predecease the testator. The substitutionary gift is what matters.

Landlord and Tenant Notebook.

Punctual Payment of Rent.

It cannot be said that the attitude of the law towards the matter of punctual payment of rent is consistent. Rent is due on agreed day, but is not in arrear until that day has elapsed; this rule slightly favours the tenant. But as the landlord has normally, in the shape of a right of distress, an advantage over ordinary creditors, one consequence is that when rent falls due on a Sunday, a tenant who has failed to seek out and pay his landlord on that day may have to pay rent and the costs of a distress next morning. This point was decided by *Child* v. *Edwards* [1909] 2 K.B. 753, in which, incidentally, a member of the Certificated Bailiffs' Association testified to a practice, "frequently acted upon," to distrain on a Monday for rent which had fallen due the day before.

On the other hand, the Common Law Procedure Act, 1852, s. 212, which provides not only for a stay of proceedings taken under a re-entry clause when the cause of forfeiture is non-payment of rent, but also for relief after re-entry has been effected, reflects the view that clemency should be shown towards the defaulter.

Further, the proviso to A.H.A., 1923, s. 34, confers statutory recognition on an "ordinary course of dealing between the landlord and the tenant of the holding," according to which "the payment of rent has been deferred until the expiration of a quarter or half year after the date at which the rent became legally due"; but the effect of the provision is to modify the restriction imposed by the body of the section on the right of distress.

In practice, of course, it is comparatively rare for rent to be paid or expected to be paid on the very day on which it falls due, whether the premises be agricultural or of any other nature. The ordinary "rent-book" issued to tenants of low rental properties—which incidentally partakes of the nature of a title-deed, a text-book of the law of landlord and tenant, and a local official directory besides discharging its primary function of recording payments of rent—will usually be found to contain special columns for the entry of arrears.

When the earlier Rent Restrictions Acts were passed, it was to be expected that something would be heard of these customary, if elastic, periods of grace. The earlier enactments did not make reasonableness a condition precedent to the granting of any order for possession, and the non-payment of rent ground in the 1915 statute was expressed in this way: "No order for the recovery of possession . . . shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this Act . . ." This somewhat vague phrase was first judicially interpreted in *Beavis* v. *Carman* (1920), 36 T.L.R. 396, an action for possession. The tenancy was a quarterly one terminable by three months' notice; the plaintiff gave such notice in September, 1919, to expire at Christmas; the defendant did not comply, and on the 3rd February, 1920, the plaintiff brought her action. At that date, the Christmas, 1919, rent was still owing; on the 8th February, the defendant tendered it to the plaintiff's agent, who refused it.

It was proved that unpunctual payment had been a feature of the relationship. The tenant had "always paid the December quarter's rent in the next following January or February without objection on the part of the plaintiff"; but A. T. Lawrence, J., found that "the facts came far short of establishing any binding practice between the parties entitling the defendant to delay payment of the rent until after the quarter-day had passed"—the landlord had been considerate, but was not obliged to continue the custom—and held that he had, therefore, failed to bring himself within the protection of the sub-section.

Later in the same year, the 1920 Act came into force, and the restriction on the right to possession became "unless any rent lawfully due from the tenant has not been paid . . . and the court considers it reasonable to make such an order." Proceedings pending at the date of its passing (2nd July) were, by a proviso to s. 19 (3), deemed to have been commenced under the new statute. A question which might be expected to arise was, what would be the position if rent were in arrear at the date of the issue of the plaint or writ, but the tenant paid up before the hearing? This was touched upon in *Benabo* v. *Horseley* (1920), 36 T.L.R. 859, when a county court judge had considered that he could accept the undertaking of a tenant to pay punctually in future; but the Divisional Court remitted the case to him to consider anew the effect of the new provisions and the matter of discretion.

But in *Brewer* v. *Jacobs* [1923] 1 K.B. 528, attention was drawn to the fact that the "possession" section was not the only part of the enactment which might affect the position. The short facts were that the plaintiff, statutory landlord of the defendant, issued a summons for possession soon after a quarter's rent had become due but had not been paid. Before trial, the tenant paid rent and costs into court. It was then pointed out that by s. 15 (1) the tenant, so long as he retained possession, was obliged to observe all the terms and conditions of the original contract of tenancy so far as the same were consistent with the provisions of the Act. The court held that read with s. 5 (the "possession" section) this meant that the statutory tenancy was liable to be taken away if the tenant got into arrear.

Nothing was said in the above case about any customary course of dealing condoning unpunctuality, but it is of interest to note that in an Irish case, *Chartres* v. *Muldoon* (1923), 57 I.L.T. 102, the learned judge said: "If I find that a tenant, though he has not paid to the day, has substantially in accordance with settled usage between him and the landlord paid it, I can find as a fact that he has complied with the section," though in the case before him there was nothing from which the inference could be drawn.

The question whether in Rent Act cases the date of the commencement of the action or the date of the hearing was what mattered was again referred to in *Gill* v. *Luck* (1923), 68 Sol. J. 100, C.A., but only as an additional ground for

holding that claims for possession of premises within the Acts, if they were to be brought in the High Court, could not be commenced under Ord. III, r. 6.

There are, of course, leases and tenancy agreements with covenants to pay rent which expressly state "punctually." One is at first inclined to deprecate this on the ground of redundancy, but from the dicta uttered in some of the cases which I have cited, and in view of the provision in A.H.A., 1923, to which I have referred, it may be said that the device might serve to negative the allegation of a binding practice if not of a course of dealing.

Lastly, while dealing with the subject, the effect of paying before quarter-day may be considered. Such payments may be rare, but their consequences may be so unexpected that it is worth while examining what may happen. The academic mind will at once appreciate that it is impossible to pay a debt which is not due; and thus the unfortunate tenants in *De Nicholls* v. *Saunders* (1870), L.R. 5 C.P. 589, and *Cook* v. *Guerra* (1872), L.R. 7 C.P. 132, having kind-heartedly obliged their landlords by paying them "rent" before it was due, found they had no answers to claims by mortgagees of the reversions when the proper time came.

Practice Notes.

RULES OF THE SUPREME COURT (No. 1), 1937.

During 1937 there were many minor amendments of the Rules of the Supreme Court, some of which are of general interest. Amendments of a major character were introduced by the abolition of the New Procedure List; that simplified recension of this code of civil procedure, which is so long overdue, we eagerly await.

Order III, r. 6 (3A), provides yet another case where a writ of summons may be specially endorsed, viz.:—

> "Where the plaintiff claims possession of any property forming a security for the payment of money."

But the term "*any* property" is not as comprehensive as would appear on the words of this paragraph alone. For this paragraph must be read together with the next amendment, the effect of which appears to exclude from the specially endorsed writ in the King's Bench Division and the advantages of Ord. XIV, claims for the possession of *freehold* and *leasehold property* forming a security for the payment of money (see "The Yearly Practice" (1938), pp. 23, 36, notes *ad loc.*, and on next amendment).

Order V, r. 5A, assigns to the Chancery Division two types of action: First, those which contain a claim for the principal or interest secured by a mortgage or charge upon *real or leasehold property*; and secondly, those in which such property forming a security is the subject of a claim for possession. "Every [such] action," the rule declares, "shall be assigned to the Chancery Division." These words would appear to limit the generality of Ord. III, r. 6 (3A), to claims for possession of any other kind of property, excluding real and leasehold property. Order V, r. 5A, specifically excludes those actions which, by s. 56 (3) of the Supreme Court of Judicature Act, 1925, are assigned to the Probate, Divorce and Admiralty Division.

Order XVIII, r. 2, which provides that no action shall, without leave, be joined with an action for the recovery of land except a claim for mesne profits or arrears of rent or double value, or damages for breach of contract under which the premises are held, or damages for any injury to the premises, is amended to include "claims for payment of principal money or interest secured by or for any other relief in respect of a mortgage or charge of such land." Such claims may now be joined without leave. In *Sutcliffe* v. *Wood* (1884), 53 L.J. Ch. 970, Kay, J., despite his inclination to do so, held that he could not give leave to join an action against A for recovery of land with an action for foreclosure against B. The new amendment now makes this possible.

Order XXXVI is amended in those rules which relate to proceedings before Official Referees. Rules 45, 46 and 47 deal with the distribution of business amongst Official Referees and r. 48 indicates their powers and duties. The rules were concerned with those cases where *an order* had been made referring any business; the amendments now apply the same procedure to a "*submission under the Arbitration Act*, 1889." Hence rr. 46 and 47 now open with the words "When an order or submission . . ." and r. 48 with the words "before any cause or matter . . . is referred to a Referee . . ." By r. 45, the order or submission may refer to a particular referee; failing such reference, the business is distributed in rotation by the clerk to the senior Official Referee. Rule 48 confers the power of holding the trial at, or adjourning it to any convenient place, or having an inspection or view.

Three new rules are added to this Order. By r. 47AA where business has been referred to any Official Referee, it must be entered with his clerk and application should be made to the Referee within fourteen days for directions or to fix the date of trial. Rule 47C confers upon any Official Referee the power to order the transfer to any other Official Referee of any business with the consent of the parties and of the transferee. By r. 47D, in the absence, or with the consent of the Official Referee to whom the business is assigned, interlocutory applications may be made to any other Official Referee.

Order LV, r. 5A, which provided that remedy by foreclosure or redemption may be sought by originating summons in the Chancery Division instead of by writ, is further amended by the addition of the words in italics among the headings of relief which may be claimed in this summons:—

> "Payment of moneys secured by the mortgage or charge, sale, foreclosure, delivery of possession by the mortgagor *whether before or after foreclosure*, redemption, reconveyance, delivery of possession by the mortgagee."

Order LV, r. 9A—a new rule—declares that an originating summons under r. 5A above may be issued out of any district registry; previously this could only have been done out of Manchester or Liverpool. The rule contains seven provisions as to procedure in those registries, which do not apply to proceedings in the District Registry of Manchester or Liverpool. By r. 9A (1) (*g*) a summons so issued may, upon application, be removed to London, if there is "sufficient reason" for this course; even without an application, the court or a judge may, at any time, direct that the matter be dealt with in London, or, if the matter has already been removed to London, in the district registry in which the summons was issued.

Order LXIII, r. 16, now enacts that the sittings of the Official Referees shall be the same as the sittings in London and Middlesex of the High Court—

> "but nothing in this rule shall prevent an Official Referee from sitting in vacation if he shall deem it expedient so to do."

An application may be made for this purpose, but the discretion of the Official Referee would appear to be final: "if *he* shall deem it expedient so to do."

RULES OF THE SUPREME COURT (No. 3), 1937.

These—in so far as they simplify general procedure and abolish the "New Procedure List"—have been fully dealt with in our issue for 15th January (82 Sol. J. 44). Certain miscellaneous amendments deserve to be noted. Order VII (Removal of a Solicitor from the Record at the instance of the other party) is amended and amplified. Service by Air Mail may be ordered under Ord. XI (r. 12A), and in fixing the time for appearance, the availability of Air Mail will be considered (r. 5). Rule 2 of Ord. LIIIB, relating to the office out of which petitions under the Companies Act shall be issued—now, the office of the Registrar of the Companies'

Court—is amended. A judge at chambers may now make a charging order under s. 69 of the Solicitors' Act, 1932 (Ord. LIV, r. 11B). The jurisdiction of the Master is enlarged by the powers possessed under certain statutes by a judge of the High Court, e.g., s. 23 of the Partnership Act, 1890 (Ord. LIV, r. 12A). Leave to serve out of the jurisdiction may now be granted by the Master: r. 12 (*b*) of Ord. LIV is revoked. The judge in Chancery Chambers has further powers under Ord. LV rr. 2 (*a*)—applications in partnership actions for payment or transfer of cash or securities—and 4 (*d*). Upon a review of taxation by the taxing officer, he may tax the costs of objections and add them to, or deduct them from, the sum payable (Ord. LXV, r. 27 (40)). In r. 27 (48) there is an amendment as to refresher fees. Only a *first* black ink copy of a written or typewritten document may now be filed, registered or marked as an office copy (Ord. LXVI, r. 3 (6)).

Our County Court Letter.

THE RESTRICTIVE COVENANTS OF CANVASSERS.

In a recent case at Nottingham County Court (*Ceylon Tea Growers' Association, Ltd.* v. *Lowe and another*) the claim was for £5 damages and an injunction to restrain breaches of a covenant not to canvass, for a period of one year from the termination of the employment, in respect of any goods dealt in by the company, any person who at any time during the employment had been a customer. The plaintiffs' case was that they had employed the defendants for many years up to the 18th September, 1937, when they left and began business either as Rawson or as the Elite Tea Company. In November, 1935, the defendants had signed the agreement sued on, which was fair and necessary for the protection of the plaintiffs' business. Since leaving the plaintiffs' employment, however, the defendants had gone round in cars and sent their own employees to canvass the plaintiffs' customers, as the defendants recognised that they could not do so personally. The defence was that the agreement was unreasonably wide and therefore void. His Honour Judge Hildyard, K.C., observed that the agreement was world-wide, and restrained people who had canvassed in Hendon, Sheffield or Bristol. It was unnecessary for the plaintiffs to have protection in those three places, and the claim for an injunction failed. A further covenant was "not to use or disclose any information whatsoever" about the affairs of the plaintiffs or their customers. There was no evidence, however, of any breach of this covenant, which was not before the court. The question of damages on the interlocutory injunction was adjourned.

MORTGAGES OF CONTROLLED HOUSES.

In *Bradley* v. *Baxter and Another*, recently heard at Birmingham County Court, an application was made for liberty to call in and enforce two mortgages of leasehold property, consisting of No. 108 Trevor Street, Nechells, and twenty houses at the rear thereof, on the ground that the security was seriously diminishing in value or was otherwise in jeopardy, within the proviso (ii) to s. 7 of the Increase of Rent, etc., Act, 1920. The applicant's case was that she was the transferee of the mortgages, which were granted in 1887, soon after the grant of the leases, which were for ninety-nine years. The properties were in a bad state of repair, and, in view of the fact that they did not comply with the bye-laws, a large expenditure was necessary. Fifty years of the term had expired, and, although the balance outstanding of the loan was £850, the property was only valued at £1,000. This was an insufficient margin of security. The respondents' case was that the property merely required re-painting, and was not in a bad state of repair, as the roofs and brickwork were in good condition. The houses were well let, and were of a type for which there was a good demand. No complaints had been received of non-compliance with the bye-laws, and the interest was amply covered by the rents. The value was £1,375, and there was no serious diminution in value, as required by the above proviso. His Honour Judge Dale held that the mortgagors had not kept the property in a proper state of repair, and there had therefore been a breach of sub-s. (*c*) of s. 7. The applicant was therefore entitled to an order on that ground, and the question of a serious diminution in value, under proviso (ii), did not arise. On the evidence, however, there was a serious diminution in value, both by effluxion of time and deterioration in the condition of the property. An order was accordingly made, as asked, suspended (by consent) for twenty-eight days, with costs on Scale B. As the proviso (ii), *supra*, did not apply, no condition was made as to the order not taking effect on repayment of a sum proportioned to the diminution of the security. See a previous case noted at 81 SOL. J. 232.

Obituary.

SIR S. L. BATCHELOR.

Sir Stanley Lockhart Batchelor, for many years a Judge of the Bombay High Court, died at Brighton on Wednesday, 19th January, at the age of sixty-nine. He was educated at St. Edmund's College, Ware, and University College, London, and passed the Indian Civil Service examination in 1887. After a few years as Sessions Judge he was appointed a Judge of the Bombay High Court in 1904. He was knighted in 1914, and he retired in 1918.

MR. P. MACBETH.

Mr. Percy Macbeth, Stipendiary Magistrate for Salford, died at his home at Hale, Cheshire, on Friday, 14th January, at the age of sixty. He was educated at Merton College, Oxford, and was called to the Bar by the Middle Temple in 1906, practising on the Northern Circuit. Mr. Macbeth was appointed Stipendiary Magistrate for Salford in 1931.

MR. R. N. CARTER.

Mr. Ronald Norman Carter, solicitor, a partner in the firm of Messrs. Carter & Swallow, of Carey Street, Lincoln's Inn, W.C., died at Leatherhead on Tuesday, 18th January, at the age of thirty-nine. Mr. Carter was admitted a solicitor in 1920.

MAJOR C. SEABROKE.

Major Claude Seabroke, retired solicitor, of Rugby, died at Weston-super-Mare on Wednesday, 12th January, at the age of fifty-nine. He was admitted a solicitor in 1903, and became a partner in the firm of Messrs. Seabroke, Son & Marshall, of Rugby. He succeeded his father as clerk to the Rugby Justices in 1918, and held that office until 1930, when he resigned. He retired from practice a few years ago on account of ill-health. Major Seabroke, who was a keen territorial officer, served throughout the Great War, and was awarded the Territorial Decoration.

MR. F. A. WOOD.

Mr. Frederick Albert Wood, retired solicitor, of Croydon and Herne Bay, formerly senior partner in the firm of Messrs. Wood & Sons, solicitors, of St. Andrew's Hill, Carter Lane, E.C., died at Croydon on Monday, 17th January, at the age of seventy-five. Mr. Wood, who was admitted a solicitor in 1884, was for many years a member of the Court of Common Council for Billingsgate Ward. He was chairman of the West End Board of the British Law Insurance Company, Ltd., and a director of other companies. He was a past-master of the Company of Tinplate Workers.

To-day and Yesterday.

LEGAL CALENDAR.

17 JANUARY.—The crops of capital sentences in the old courts were often rather deceptive to modern minds. For instance, of five burglars, a footpad, a forger and two female thieves condemned to death at the Sessions which ended at the Old Bailey on the 17th January, 1764, only the forger and two of the burglars were executed. But thirty-four criminals were transported for seven years.

18 JANUARY.—On the 18th January, 1820, there was an extraordinary trial at the Old Bailey, when John Robertson, "a fashionable looking man dressed in black," was indicted for stealing a mare. A stable-keeper swore positively that he had hired the animal and never returned it. Later, he said, he had met him by chance in an inn at Reading and charged him with the theft, but, supported by the landlord, he had denied his identity, declaring he was a commercial traveller named Henley. Later, the puzzled stable-keeper declared, he met him in Marylebone, and that time he denied that he was either the hirer of the mare or the man in the Reading inn, but stated that his name was John Robertson, and that he lived at Bloomfield Cottage, near the Regent's Canal. Not to be baulked, the stable-keeper had him arrested, but so many respectable witnesses appeared at the trial to testify for the prisoner that the court, amid cheering, decided it was a case of mistaken identity and acquitted him.

19 JANUARY.—In 1914, the whole Court of Appeal, consisting of Lord Reading, C.J., Lord Cozens-Hardy, M.R., and the five Lords Justices, met to decide points of grave international importance. The Great War had just begun. Could an alien enemy sue in the King's Courts? Could he be sued? If he could be sued, what rights had he in the conduct of his defence? Judgment was delivered on the 19th January, 1915, two days after the death of one of the members of the Court, Kennedy, L.J. It was held that an alien enemy could not sue, but that if he were sued, he could both make defence and appeal.

20 JANUARY.—On the 20th January, 1649, the trial of Charles I, King of England, opened in Westminster Hall. When John Cook who led for the prosecution began to speak "the prisoner having a staff in his hand held it up, and softly laid it upon the said Mr. Cook's shoulder, bidding him hold. Nevertheless, the Lord President bidding him go on, Mr. Cook did accordingly." As the King drew back his cane, the silver head fell off. "He stooping for it put it presently into his pocket. This was conceived to be very ominous."

21 JANUARY.—In January, 1758, seventy men from H.M.S. "Namur" lying in Portsmouth Harbour forced their way ashore and set out for London to complain to the Lords of the Admiralty of the intolerable badness of the provisions. Fifteen of them having tried to procure an audience, they were put into irons and sent back. On the 21st January they were tried by court-martial on board the "Newark" for mutiny and all sentenced to death. On the day of execution, however, they were informed that the King had pardoned fourteen of them, but that they must draw lots which one was to hang. The second man to draw died.

22 JANUARY.—On the 22nd January, 1559, Sir James Dyer became Chief Justice of the Common Pleas, holding his place for twenty years.

23 JANUARY.—On the 23rd January, 1612, Mr. Justice Fenner of the Court of King's Bench died, after twenty-one years' judicial service under Elizabeth and James I. He was buried at Hayes in Middlesex. He is best remembered by a curious account of "the arraignment, judgment and execution of three wytches of Huntingdonshire, being recommended for matter of truth by Mr. Judge Fenner."

THE WEEK'S PERSONALITY.

Chief Justice Dyer had a career of fairly rapid promotion. In 1552, at the age of about forty, he became a serjeant. Soon he was King's Serjeant, Member of Parliament, Speaker of the House of Commons, Recorder of Cambridge and Knight. In 1557 he became a Justice of the Common Pleas, and two years' later Elizabeth made him Chief Justice. Thus goes the versified account of his success:—

"From roome to roome he stept by true degrees
And mounts at last to soveraigne justice' place,
Where long he sat Chief Judge of Common Pleas
And to say truth he sat with justice grace
Whose sacred will was written in his face;
Settled to heare but very slowe to speake
Till either past, at large, his minde did breake.
* * * * * *
And when he spoke he was in speeche reposde
His eyes did search the simple sutor's hart
To put by bribes his hands were ever closde
His processe just, he tooke the poore man's parte
He rulde by law and listened not to arte.
These goes to truthe-loove, hate and private gaine—
Which most corrupt, his conscience could not staine."

He remained Chief Justice more than twenty years, longer, says a biographer, "if my eye or arithmetic fail me not than any in that place before or after him."

DUELLING AT THE BAR.

It is reported recently that a noted French advocate had been struck off the rolls of the Paris Bar for issuing a challenge to the Public Prosecutor at Valence, who, he alleged, had insulted him in court. Fashions of advocacy have a way of altering from time to time, and his misfortune serves to emphasise the fact that a century ago skill as a duellist was as necessary for success at the Irish Bar as eloquence or learning. Sometimes, indeed, it was a fine substitute for both, and the notorious Lord Norbury is said to have earned his Chief Justiceship by timely and effective use of his pistols in extinguishing the more inconvenient opponents of his political party. Mr. Baron Metge was another duelling judge, and even the great Catholic champion O'Connell was once manœuvred into accepting the challenge of an ex-naval officer whom his enemies confidently counted on to kill him. The reverse was the event, and in his lasting regret for the incident O'Connell steadfastly refused to fight again.

CURRAN'S ENCOUNTERS.

Curran, in the course of his brilliant course from Bar to Bench, fought three duels, each with an element of comedy. His encounter with Mr. Egan, the portly chairman of the Kilmainham Sessions, gave rise to one of his best jokes, for when his own diminutive stature was commented on by his opponent's seconds as creating an element of unfairness, he suggested that his outline should be traced on Egan's body and that hits outside shouldn't count. It was the imputation flung at him in Parliament of being a "puny babbler" which caused him to challenge the future Lord Chancellor Clare, then Attorney-General. On that occasion he was in grave danger of his life, for after he had fired and missed, the Law Officer deliberately aimed at him for a full half minute before returning the shot. On the very threshold of his career he had been obliged to fight a duel with a litigant whose character he had bitterly assailed in a speech in court. On the field, he noticed his opponent, who was a nervous man, aiming wide, and calling in a loud voice "Fire!" caused him to start violently and miss. He himself refused to shoot. Soon afterwards the gentleman died and it was said in Munster that he had been "killed by the report of his own pistol."

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

"Landlord and Tenant Notebook"—Effect of "One Year Certain."

Sir,—We were very interested in the article on page 1035 of your issue of the 25th inst. relating to the question of the power to determine leases from year to year.

The cases quoted are often cases in which, the position of a tenancy from year to year having apparently been created, words are added which purport to cut down the usual implied period of notice. Your contributor might find it interesting to consider whether the period can be lengthened.

In a case we have in mind, a licence to work a patent was given on certain terms as to payment of royalties, etc., "for the term of one year and thence yearly until determined as hereinafter provided" or until the expiration of the term for which the patent was granted.

The only subsequent powers given were one for the patentee to determine the licence in the event of non-payment of royalties, and another for automatic determination on revocation of the patent.

One view is that, after the expiration of the first year, the licensee can determine by one year's notice expiring on the second or later anniversary of the commencement of the term. The other view is that the licence cannot be determined by the licensee at all.

The question appears to be whether the words "as hereinafter provided" exclude the implied powers.

Another point is whether the licensee, unlike the patentee, having been given no express power to determine, has therefore the implied right, whereas the patentee must rely only on the express power.

Budge Row, E.C.4. MEABY & Co.
24th December, 1937.

[A copy of this letter was sent to the contributor of the "Landlord and Tenant Notebook," and in reply he says that he considers that the general principles of construction demand that some effect be given to the words "and thence" and "yearly," and that the only effect can be that after the licence has been held for one year the relationship of licensor and licensee shall continue, subject to the right of either to determine it by six months' notice expiring with an anniversary of the agreement.

It may be that the intention was to provide further conditional rights of determination and that this intention was later forgotten, but, even so, the words "until determined as hereinafter provided" can consistently be referred to the two events mentioned. It should be noted that "determined" does not necessarily connote the exercise of a choice and will cover the automatic determination referred to in the fourth paragraph of the letter.

The words "as hereinafter provided," then, merely qualify the manner in which the agreement is to differ from an ordinary yearly agreement. Indeed, the contrary view would mean that the word "yearly" is of no effect and might as well have been omitted.

As to the final suggestion, *cadit quæstio*.—ED., *Sol. J.*]

The late Mr. Justice Swift.

Sir,—I have been entrusted with the preparation of the biography of the late Mr. Justice Swift. This will be published in due course by Messrs. Methuen. I should be most grateful if those of your readers who possess letters, etc., from him would lend them to me. Original letters will be returned without delay. Personal memories, especially of the judge's early life, would also be of great assistance.

3, Paper Buildings, Temple, E.C.4. E. STEWART FAY.
11th January.

Notes of Cases.

Judicial Committee of the Privy Council.

Raja Jagadish Chandra Deo Dhabal Deb *v.* Mirza Santal and Others.

Lord Wright, Sir George Lowndes and Sir George Rankin.
30th November, 1937.

VILLAGE HEADMAN—TENANCY OF—VACANCY—APPOINTMENT OF SUCCESSOR — ANCIENT CUSTOM OF HEADMANSHIP BROUGHT TO FOUNDATION OF VILLAGE BY VILLAGERS—RECENT FOUNDATION OF VILLAGE IMMATERIAL—APPLICATION BY VILLAGERS FOR APPOINTMENT OF HEADMAN—STATUTORY PROVISIONS AS TO—WHETHER RETROSPECTIVE—LIMITATION—WHETHER APPLICATION A "CAUSE OF ACTION"—RIGHT OF APPLICATION CONTINUOUS DURING EXISTENCE OF VACANCY—CHOTA NAGPUR TENANCY ACT (Bengal Act VI of 1908), ss. 74A, 231.

A village headman having died in 1917, the villagers claimed that he was succeeded as headman by his brother, and that the headman's tenancy passed to him. The lessor, contending that on the existing facts the brother had not succeeded, that no village headman should be appointed, and that he (the lessor) was entitled to *khas* possession of the village properties, attempted to enforce rights on that basis. The villagers thereupon took proceedings under s. 74A of the Chota Nagpur Act, 1908. The matter having come before a Deputy Commissioner and a Commissioner, each officer found as a fact that there was a custom of headmanship in the village. The village was founded in 1891 or shortly before. By s. 74A of the Act of 1908: "(1) Where a tenancy, which in accordance with custom is held by a village headman, has for any reason been vacated, any three or more tenants holding land within the said tenancy, or the landlord, may apply to the Deputy Commissioner to determine the person who in accordance with the custom should be village headman entitled to hold the tenancy . . ." By s. 231: "All suits and applications instituted or made under this Act, for which no period of limitation is provided elsewhere in this Act, shall be commenced and made respectively within one year from the date of the accruing of the cause of action . . ." *Cur. adv. vult.*

LORD WRIGHT, giving the judgment of the Board, said that the Board saw no reason for interfering with the findings of fact of the Deputy Commissioner and the Commissioner. It had been argued that the findings were vitiated because a custom must be an ancient custom of the village, whereas on the evidence this village was of quite recent foundation. Their lordships were unable to accept that view. In their judgment, assuming that the village was of recent foundation, it was founded by members of the tribe who brought to its foundation their ancient custom. It was, however, further contended that the whole proceeding was incompetent, because in 1917, when the village headman died, s. 74A, which was only enacted in 1920, was not in force and could not have a retrospective effect. Their lordships could not accept that contention. At the time when s. 74A was enacted, there was, according to the findings of the Deputy Commissioner and the Commissioner, in fact a vacancy; the tenancy of the village headman had in fact been vacated, and there appeared to be no reason why s. 74A, as soon as it came into operation, should not be applied to that state of things. It was contended for the appellant that s. 231 of the Act of 1908 applied to applications under s. 74A, but the difficulty which arose was to apply to the position under s. 74A the words "the cause of action." Section 74A according to ordinary interpretation was not dealing with a cause of action at all. What the section dealt with was not in the nature of a litigation or a dispute, but the calling into operation of an administrative duty on the part of the Deputy Commissioner. As there was not in the strict sense

a cause of action under s. 74A, but merely a right to invoke an administrative operation, s. 231 was incapable of application. The view accepted by the Board of Revenue, namely, that the right of application is a continuing right which endures so long as there is a vacancy, their lordships were prepared to accept as the most reasonable construction on the assumption that s. 231 did apply. Section 74A made the right of applying conditional on a state of facts, namely, where a tenancy had been vacated. While that condition existed there was no ground for fixing on any specific moment of time. If the language had been "when a tenancy has been vacated," the matter would perhaps have required to be considered differently. The appeal should be dismissed.

COUNSEL: *A. M. Dunne*, K.C., and *J. M. Pringle*, for the appellant. There was no appearance by or on behalf of the respondents.

SOLICITORS: *A. J. Hunter & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

In re Fox's Estate; Dawes *v.* Druitt.

Greene, M.R., Romer and MacKinnon, L.JJ.
1st December, 1937.

WILL—CONSTRUCTION—DIVISION OF ESTATE—DIRECTION IN EVENT OF LAPSE "BY THE DEATH OF ANY PERSON"—FAILURE BY REASON OF BENEFICIARY NEVER HAVING HAD ISSUE—EFFECT.

Appeal from a decision of Bennett, J.

A testator, who died in 1878, left his real and personal property to his executors in trust "as to one fourth part thereof for my daughter F.S.F. for her separate use, as to one other fourth part for my daughter A.C.P. for her sole use for her life, and after her decease for her children, if she shall leave children, equally, as to one fourth part for the children of my deceased son G.J.F. in equal shares, and as to the remaining one-fourth part for T.W.S. and T.S. . . . and I declare that benefit hereunder shall become vested on the coming of age of the legatee and that any legacy which by the death of any person shall lapse shall go to my said daughter F.S.F." In 1923 A.C.P., who had never had any issue, died. Bennett, J., held that the will had not provided for that event and that the assignees of F.S.F. were not entitled to have transferred to them the share in which A.C.P. had had a life interest.

GREENE, M.R., allowing the assignees' appeal, said that A.C.P.'s death was the occasion of the lapse but not the cause of it. The cause was that there had been no children. The language could not be construed as referring in terms and expressly to the event which had happened. The question arose whether the rule in *Jones* v. *Westcomb*, Prec. Ch. 316, applied. The rule was that where a testator had provided for the determination of an estate in any of two or more events and had then given a gift over expressly to take effect on one only of those events, the court would, in the absence of any indication to the contrary, imply by way of necessary implication an intention on his part that the gift over should take effect, not merely in the specified event, but on the happening of any of the events which were to determine the previous estate. The rule depended not on the existence in the will of any particular word or phrase which, as a matter of construction produced that result, but on the necessary implication of a provision to that effect in order to carry out what must have been the testator's intention ("Jarman on Wills," 7th ed., p. 2131). In this will "lapse" had not its strict technical meaning. In connection with this legacy there were four possibilities: (1) The death of A.C.P. and all her children in the testator's lifetime; (2) the death of A.C.P.'s children in her lifetime; (3) the death of all A.C.P.'s children before attaining twenty-one years; (4) no children having been born. The language was apt to cover the last case as well as the other three, and did not prevent the application of the rule in *Jones* v. *Westcomb, supra*. But even if the words "by the death of any person shall lapse," on its true construction were confined to the case of death in the testator's lifetime this would be a case for the application of the rule. By necessary implication there was to be imported into this gift over an intention on the part of the testator that it was to take effect not merely in the event expressly provided for but also in the event of no children coming into existence.

ROMER and MACKINNON, L.JJ., agreed.

COUNSEL: *Roxburgh*, K.C., and *R. Hodge*; *A. E. Clark*.

SOLICITORS: *Dawes & Sons*; *Lovell, Son & Pitfield*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Bennett (Inspector of Taxes) *v.* Marshall.

Greene, M.R., Romer and MacKinnon, L.JJ.
13th, 14th and 15th December, 1937.

REVENUE—INCOME TAX—EMPLOYMENT BY AMERICAN COMPANY—SUBSTANTIAL PART OF DUTIES CARRIED OUT IN ENGLAND—PAYMENT INTO BANKING ACCOUNT IN CANADA—WHETHER ASSESSABLE UNDER SCHED. E OR SCHED. D, CASE V.

Appeal from a decision of Lawrence, J.

In August, 1933, the respondent was appointed Vice-President in charge of overseas sales of a United States company of Dayton, Ohio, his duties being to supervise the company's sales throughout the world except in the United States and Canada. He resided in England where a substantial part of his duties was performed and had to visit various countries except the United States and Canada. His place of employment was found to be the office at Dayton, from which he was paid, his salary being credited to a banking account in Canada, whence he drew such moneys as he required. Lawrence, J., held that he was not assessable under Sched. E, but under Case V of Sched. D, and that the measure of his liability was the actual amounts remitted to this country.

GREENE, M.R., dismissing the Crown's appeal, said that the comparison was between Case II and Case V. The question was whether the annual profits were received as income arising from possessions out of the United Kingdom or in respect of a profession or vocation under Case II. The "possessions" in Case V extended to cover trades, professions, employments and vocations. The Crown had argued that this matter did not fall within Case V and did not suggest that it fell both within Case II and Case V. It had been argued that the only trades, professions or employments falling within the word "possessions" were those wholly carried on outside the United Kingdom and that once you found an act done in the United Kingdom in the course of trade, profession or employment, these could not be described as "possessions" out of the United Kingdom. His lordship referred to *Colquhoun* v. *Brooks*, 14 A.C., at p. 516, and said that the question was whether the source of income which it was sought to charge was or was not a source out of the United Kingdom. There was an inherent difference between a trade or profession on the one hand and an employment on the other. The former were based on activity and you could not put your finger on a particular contract as the source of the income. If a doctor carried on his profession in England and abroad that was not two professions; so, too, with a trader. But in the case of an employment the contract must first be looked at to see whether or not the income was derived from a source out of the United Kingdom. His lordship referred to *Pickles* v. *Foulsham* [1925] A.C. 458, and said that the test as to the source of income was in the place where it really came to the employee and that place was Canada.

ROMER and MACKINNON, L.JJ., agreed.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *R. Hills; Radcliffe*, K.C., and *Bowe*.

SOLICITORS: *Solicitor of Inland Revenue; Sheard, Breach & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

British Sugar Manufacturers Ltd. *v.* Harris (Inspector of Taxes).

Greene, M.R., Romer and MacKinnon, L.JJ.
15th and 16th December, 1937.

REVENUE—COMPANY—PERCENTAGE OF PROFITS—PAID UNDER AGREEMENT—GIVEN FOR BENEFIT OF TECHNICAL AND FINANCIAL KNOWLEDGE—WHETHER ALLOWABLE AS INCOME TAX DEDUCTION.

Appeal from a decision of Finlay, J.

In 1926 an agreement dealing with the financial re-organisation of the appellant company was entered into by them with a foreign company, the Skoda Works, to whom they had become indebted, and an English company, the British and Allied Investments Corporation, Ltd. The agreement provided for the issue of certain debentures, and by cl. 11 the Skoda Works and the Corporation were to perform certain services to the appellants, it being provided: "In each of the four years ending 31st March, 1927, 1928, 1929 and 1930, Skoda Works and the Corporation shall be entitled to receive between them and in such proportions as they shall mutually agree upon 20 per cent. of the net profits of the company in consideration of their giving to the company the full benefit of their technical and financial knowledge and experience and giving to the company and its directors advice to the best of their ability respectively on all questions of or relating to manufacture and finance and disposal of the company's products, provided that the company shall not by reason of this clause be liable to pay any remuneration to the directors nominated by Skoda Works beyond their fees as directors and their travelling and other expenses. Such net profits shall be arrived at after payment of all expenses of the company and after providing for interest on the said debentures but before making any provisions for depreciation . . ." Finlay, J., held that the appellant company, for the purposes of their assessment under Case I of Sched. D, were not entitled to treat the sums so paid as deductible for income tax purposes as being "money wholly and exclusively laid out or expended for the purposes of the trade," but that those sums were a distribution of profits.

GREENE, M.R., allowing the company's appeal, said that the agreement was for remuneration by way of a commission representing a percentage of profits for services rendered to the company. The absence of a fixed salary in addition did not affect the matter. The sum payable was a proper deduction. The work to be done was ordinary management work and ordinary advisory work in respect of technical matters. The "net profits" referred to had to be arrived at on a conventional basis, not the basis on which the company would arrive at its profits for commercial or income tax purposes. There was a line between a contract for a payment of a share of profits *simpliciter* and a payment of remuneration deductible before the profits divisible were ascertained. If a person purchased a share of profits as in *Last* v. *London Assurance Corporation*, 10 App. Cas. 438, the profits paid to him could not be deducted, but here there was no purchase of a share of profits. Cash did not pass in exchange for these profits but services, and the badge of such a contract was remuneration for services. The mere circumstance that services were rendered might not be conclusive. There might be a case where a person contributed some sort of joint adventure services, while others, perhaps, contributed capital, land, plant and goods, the arrangement being that no one should get anything till the pool of profits was ascertained, and that then it should be divided up in specified proportions. That would be a real agreement for division of profits. There would not be two "profit" funds to be ascertained for different purposes. But here there were two funds of so-called profits. The first had to be calculated to ascertain the 20 per cent., and in that the persons entitled to the company's profits, the shareholders, had no concern. When that amount had been ascertained it became necessary to find the divisible profits and for that purpose to take another account, reckoning with the sum paid out on the taking of the first account. This was merely an agreement under which, before ascertaining the divisible profits of the company, the Skoda Works and the Corporation were to receive on a particular conventional basis a commission sum as remuneration for their services. *Union Cold Storage Co. Ltd.* v. *Adamson*, 144 L.T., at p. 151, and *Indian Radio and Cable Communications Co. Ltd.* v. *Income Tax Commissioner, Bombay Presidency and Aden* (1937) 3 All E.R. at p. 713, disposed of this case. The solution to the question was that "profits" might be used in one sense for one purpose and in another for another. The expressions in *Pondicherry Railway Co.* v. *Income Tax Commissioner of Madras*, 58 Ind. App., at p. 251, had to be read in relation to the particular subject-matter dealt with. On these grounds and on no other the appeal would be allowed.

ROMER and MACKINNON, L.JJ., agreed.

COUNSEL: *King*, K.C., and *F. Grant; The Attorney-General* (Sir Donald Somervell, K.C.), and *R. Hills*.

SOLICITORS: *Godden, Holme & Ward; Solicitor of Inland Revenue.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Radcliffe *v.* Ribble Motor Services Ltd.

Greer and Scott, L.JJ., and Luxmoore, J.
20th December, 1937.

MASTER AND SERVANT—MOTOR-BUS DRIVER—KILLED BY NEGLIGENCE OF ANOTHER DRIVER—BOTH IN SERVICE OF SAME EMPLOYER—ACTION FOR DAMAGES—DEFENCE OF COMMON EMPLOYMENT.

Appeal from a decision of Hawke, J.

On the 25th June, 1935, E.R. was the driver of one of six motor-buses owned by the defendant company engaged to take a party from a Liverpool café to Liverpool Cathedral, and then to New Brighton. The drivers were instructed to return thence direct to the garage. While so doing his bus stopped and he got out to see what was wrong. The driver of the bus following tried to get in front to see what was wrong, and if necessary to help him, but failed to see where he was and crushed him between the two buses, so that he died. In an action for damages by the widow against the defendant company, alleging negligence on the part of their servant, Hawke, J., gave judgment for the plaintiff, holding that the defence of common employment did not apply.

GREER, L.J., allowing the defendants' appeal, said that the two men were at the time of the accident in common employment within the meaning of the doctrine. The cases established (1) that in every contract of service there was a promise implied by law on the part of every employee that he accepted the risk of injury by the negligence of his fellow employees engaged in common employment with him; and (2) that it was not sufficient to show merely that the negligent employee and the one claiming damages based on his negligence were servants of a common master. Several authorities established that two men might be in common employment within the doctrine, even though working in different departments of duty. There was no case in which it had been held that two employees carrying out the same order of their employer or carrying out similar orders in close juxtaposition to one another were not in common employment.

SCOTT, L.J., and LUXMOORE, J., agreed.

COUNSEL: *Croom-Johnson*, K.C., and *S. Allen*; *Gorman*, K.C., and *Rice-Jones*.

SOLICITORS: *Berrymans*, for *Weightman, Pedder & Co.*, of Liverpool; *Silverman, Jordan & Co.*, for *Silverman & Livermore*, of Liverpool.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

North Level Commissioners *v.* River Welland Catchment Board.

Luxmoore, J. 13th December, 1937.

WATER — RIVER — ARTIFICIAL BANK — SEPARATED FROM RIVER—NATURAL AND ARTIFICIAL BANKS AND CONSIDERABLE AREA OF LAND BETWEEN—WHETHER BANK ADJOINING RIVER—NORTH LEVEL ACT, 1857 (20 & 21 Vict., c. cix)—LAND DRAINAGE ACT, 1930 (20 & 21 Geo. 5, c. 44), s. 81.

The River Welland was tidal at all points material to this action. On its south side a short distance from the natural bank was an artificial bank, the Cradge Bank. Beyond that lay the Barrier Bank, another artificial bank, at a distance varying from 50 yards to three-quarters of a mile. This bank ran from Peakirk, through Crowland and Brotherhouse Bar to Spalding. The section from Peakirk to Brotherhouse Bar was the material section. In dry weather the river flowed within its natural bank. At spring tides it reached the Cradge Bank, rising about 14 feet above ordnance datum. In times of abnormal rainfall if the water rose another foot it overflowed the Cradge Bank and reached the Barrier Bank. Between the Cradge Bank and the Barrier Bank there was an artificial channel known as the New River, controlled by a sluice-gate at its junction with the river, and operating as the main drainage channel for the land within the Barrier Bank. The Barrier Bank was erected about 1650 to protect the land on its far side, the portion between Peakirk and Brotherhouse Bar being made by a number of men known as "the adventurers," deriving their powers under a Commonwealth Act of Parliament. An Act of 1753 established the North Level Commissioners, charged with controlling the drainage within their area. The North Level was divided thereby into five districts, one of which had as its northern boundary the Barrier Bank from Peakirk to Crowland, and another the Barrier Bank from Crowland to Brotherhouse Bar. The powers and duties with regard to the Barrier Bank remained in the Bedford Level Corporation. The North Level Act, 1857, vested the Corporation's jurisdiction, including the maintenance of the Barrier Bank between Peakirk and Crowland in the Commissioners. By the Postland Drainage Order, 1928 (made under the Land Drainage Act, 1861) constituting the Postland Drainage District, the Commissioners were empowered to acquire the Barrier Bank from Crowland to Brotherhouse Bar, the liability for its maintenance being transferred after the acquisition from the persons then responsible (s. 5). It was further enacted that the maintenance of the Barrier Bank between Crowland and Brotherhouse Bar should thereafter form part of the general works of the Commissioners. In 1929 the portion of the Barrier Bank referred to was conveyed to the Commissioners, subject "to the entire liability for the maintenance" of it. The Land Drainage Act, 1930, s. 1, constituted land drainage districts known as catchment areas. In 1932 the River Welland Catchment Board was constituted by a scheme under the Act. To it were transferred "all rights, powers, duties, obligations and liabilities over or in connection with the main river as were immediately before the commencement of the said Act vested in or to be discharged by any drainage authority and any property held by any such authority for the purposes of or in connection with such rights, powers, duties, obligations and liabilities . . ." In this action the Commissioners sought a declaration that the Board was responsible for the maintenance of the Barrier Bank.

LUXMOORE, J., in giving judgment, referred to the Land Drainage Act, 1930, ss. 1, 3, 5, 6, 7, 10, 34 and 81, and said that the Act imposed no liability on the Board, save with regard to the main river, including its banks, and to drainage works in connection with the main river. The scheme could not transfer to the Board the liability contended for unless on the true construction of the Act the term "main river" included the Barrier Bank. Even assuming that the Barrier Bank, at the time of the passing of the Act, was universally known as the south bank of the River Welland, that was not decisive because of the definitions of "main river" and "banks" in s. 81. The Barrier Bank was not adjoining the river and did not confine its waters, nor was it, like the Cradge Bank, constructed for the purposes of or in connection with the channel. It was constructed to protect the land on the far side from the flood waters of the land nearer the river. The fact that the boundary of the Welland Catchment Area ran along the top of the bank so that the half remote from the river was excluded from it afforded support to the view that it was not a "bank" within the definition in the Act. In any event the transfer of rights and obligations in respect of any part of the bank outside the catchment area would have been *ultra vires*. On the maxim *generalia specialibus non derogant* (see *Blackpool Corporation* v. *Starr Estate Co.* [1922] 1 A.C. 27) the relevant provisions of the North Level Act, 1857, were still in force. The North Level Commissioners were so far as the portion of the Barrier Bank comprised in the catchment area was concerned an "internal drainage board" of a drainage district within the catchment area (see s. 81), and as such liable for its maintenance. The Board were under no liability to maintain the bank.

COUNSEL: *Wallington*, K.C., and *Elborne*; *Eve*, K.C., and *Squibb*.

SOLICITORS: *Smith, Rundell, Dods & Bockett*, for *Calthrop & Leopold Harvey*, of Spalding; *Lee, Ockerby & Co.*, for *A. F. Whittome*, of Wisbech.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Illustrated Newspapers Ltd. *v.* Publicity Services (London) Ltd.

Crossman, J. 19th January, 1938.

PASSING OFF—ILLUSTRATED WEEKLY PAPERS—COPIES IN HOLDERS SUPPLIED TO HOTELS BY DEFENDANTS—INSERTION OF SHEET OF ADVERTISEMENTS—INJUNCTION TO RESTRAIN.

The plaintiffs published a group of London weekly illustrated journals including the "Tatler," the "Sphere" and others. The defendants who were specialists in advertising supplied several hotels with current copies of certain of these journals in stiff jackets. Near the centre of these copies. they inserted inset sheets of advertisements composed of paper of the same size and quality as the original journals, each page thereof having the word "supplement" printed on it. At the bottom of the inset there was printed in very small type the words: "This inset is printed and published by Publicity Services (London) Ltd. and is no part of the original publication." The plaintiffs sought an injunction to restrain the defendants (1) from passing off altered copies as unaltered copies issued by them; and (2) from inserting advertising matter in such a way as to hold them out as being responsible for it. They contended that the defendants' acts were calculated to deceive the public into the belief that the altered copies were supplied by them They also contended that the scheme depreciated the value of the publications and was calculated to expose them to the risk of legal proceedings by reason of its being made to appear to their advertisers that the added advertising matter was inserted by them so as to constitute breaches of contract.

CROSSMAN, J., in giving judgment, said that the acts of the defendants were calculated (1) to lead the trade and the public to believe that the inset was part of the original publication; (2) to cause damage to the plaintiffs; and (3) to expose the plaintiffs to legal proceedings. The printing of the words in small type did not affect the first finding. After the insertion of the advertisement inset, the publication would be less attractive both to the reading public and to advertisers. Advertisers might be led to place their advertisements with the defendants instead of the plaintiffs. Further, on the evidence, the plaintiffs might incur the risk of legal proceedings. The plaintiffs had relied on *Spalding* v. *A. W. Gamage Ltd.*, 31 T.L.R. 328, and *Samuelson* v. *Producers' Distributing Co.* [1932] 1 Ch. 201. The defendants had contended that a right of action for passing off did not arise unless some third party was deceived, and argued that the judgment of Lord Halsbury, L.C., in *Reddaway* v. *Banham* [1896] A.C. 199, in that respect went too far. They had argued that here no person had been deceived into dealing with the defendants instead of the plaintiffs. But the plaintiffs had been injured in the goodwill of their publications. If a person represented his goods as being those of another and damage might result he would be liable to an action. The defendants had represented for trading purposes that their inset was part of the original publication, and damage to the plaintiffs was likely to be caused. The plaintiffs were entitled to an injunction in the form claimed in the first clause of their claim. The second was too wide.

COUNSEL: *Romer*, K.C., and *Tookey*; *Bray*, K.C., and *E. Pearce*.

SOLICITORS: *Nicholson, Graham & Co.*; *Lee & Pembertons*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Shacklock *v.* Ethorpe, Ltd.

Greaves-Lord, J. 29th November, 1937.

INNKEEPER—THEFT OF JEWELLERY LEFT IN LOCKED CASE IN UNLOCKED BEDROOM—NOTICE REQUIRING DEPOSIT WITH MANAGEMENT INCONSPICUOUSLY PLACED—LIABILITY—WHETHER LIMITED—INNKEEPERS ACT, 1863 (26 & 27 Vict., c. 41), s. 3.

Action for damages for negligence.

The plaintiff was resident as a guest in an hotel owned by the defendants. While she was absent from the hotel, jewellery was stolen from a locked jewel case in a locked dressing case which she left in her bedroom. The thief booked a room in the hotel after the plaintiff's departure on the material day. The defendants contended (A) that the loss was wholly or partially caused by the plaintiff's negligence in failing to take steps to safeguard the jewellery, and alternatively (B) that their liability was limited by reason of the plaintiff's omission in not depositing it with them. By s. 3 of the Innkeepers Act, 1863, "Every innkeeper shall cause at least one copy of the first section of this Act . . . to be exhibited in a conspicuous part of the hall or entrance to his inn, and he shall be entitled to the benefit of this Act in respect of such goods or property only as shall be brought to his inn while such copy shall be so exhibited." The notice required by that section had been placed on the wall of a passage leading from the hall, and was above a glass showcase 5 feet 8 inches high used for exhibiting chocolates. The plaintiff claimed the value of the jewellery stolen.

GREAVES-LORD, J., said that previous acquaintance with the hotel had taught the plaintiff that it was very inconvenient for her to lock her room and take the key with her as the management had no duplicate keys to the room. There was no invitation to guests to leave their keys at the office, and no board was placed in a position to afford such an invitation. The hotel was small, and the means of access to the upper floors so restricted as, in the opinion of the staff and the guests, to render negligible a stranger's chance of reaching the upper floors unobserved. The plaintiff, on leaving her room on the material day, did not communicate with the management in any way on leaving the hotel. There was on the premises a safe which was never brought to the plaintiff's notice in such a way as to make her think there was a repository into which she could put her jewellery. A small notice inside the window of the reception office was relied on by the defendants as constituting an invitation to the plaintiff to deposit her jewellery with the management. In his (his lordship's) opinion that was not in itself enough to bring the existence of a repository to the plaintiff's notice. It could not, in those circumstances, be said that the plaintiff had negligently left her jewellery in her bedroom. The general conditions of management of the hotel, the general confidence that no stranger would be likely to gain access to the bedrooms, and the general circumstances in which all the guests were accustomed to leave their doors locked, acquitted the plaintiff of all negligence. As to s. 3 of the Act of 1863, if the notice had been exhibited in the vestibule, and those in charge of the hotel had treated that as the hall of the hotel, such an exhibition would have operated to limit the defendants' liability. But it was doubtful whether the place where the defendants exhibited their notice was part of the hall at all. The notice was in a passage leading from the hall to other parts of the premises. The place in which it was was one which an innkeeper might well choose for putting something out of the way, and was the last place in which anything of importance would be put. The notice hung in what might be a conspicuous part of the passage but was not part of the hall or entrance as a whole. The notice was not exhibited in a conspicuous part of anything which could be taken as answering the description of the required position. The defendants were accordingly not entitled to a limitation of their liability, and there must be judgment for the plaintiff.

COUNSEL: *G. Beyfus*, K.C., and *S. Gates*, for the plaintiff; *N. L. C. Macaskie*, K.C., and *M. Berryman*, for the defendants.

SOLICITORS: *Vickress & Clare*; *Berrymans*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Bowen *v.* Norman.

Lord Hewart, C.J., Branson and Humphreys, JJ.
18th January, 1938.

BASTARDY—MARRIED WOMAN—ORDER AGAINST HUSBAND FOR MAINTENANCE—NO PROVISION IN ORDER RELIEVING WIFE FROM OBLIGATION TO COHABIT—WHETHER ORDER SUFFICIENT TO REBUT PRESUMPTION OF ACCESS.

Appeal by case stated from a decision of the Miskin Higher (Glamorgan) stipendiary magistrate.

The respondent, Mrs. Norman, laid a complaint against the appellant, Bowen, alleging that he was the father of a child delivered to her in June, 1937. The following facts were proved or admitted at the hearing of the complaint: The respondent was lawfully married to one, J. F. Norman, in 1930, and he was alive at the date of the complaint. In October, 1935, after a complaint by Mrs. Norman, an order was made by Willesden police court ordering Norman to pay Mrs. Norman and their two children weekly maintenance. The order did not contain any provision that Mrs. Norman should no longer be bound to cohabit with her husband. They did in fact live apart as a result of the order. Mrs. Norman gave evidence of two occasions of intercourse between herself and the appellant; that, in the presence of another person, he said, when asked if he would take the child, that he had a good home for it; and that, in the presence of Mrs. Norman's mother, the appellant had not denied being the child's father. Mrs. Norman gave no evidence of non-access by her husband. It was contended for the appellant that, as the maintenance order against Norman did not contain a provision that Mrs. Norman should

be no longer bound to cohabit with her husband, it was essential in law that Mrs. Norman should call independent evidence of non-access by her husband, and that the child must be presumed to be that of her husband, and could not, in the absence of evidence of non-access, be adjudged that of the appellant. Reference was made to *Russell* v. *Russell* [1924] A.C. 687; *Hetherington* v. *Hetherington* (1887), 12 P.D. 112; *Andrews* v. *Andrews* [1924] P. 255; and *Mart* v. *Mart* [1926] P. 24. The magistrate, holding that evidence of non-access by the respondent's husband was unnecessary, made an order against the appellant. He called attention to *Stafford* v. *Kidd*, 81 Sol. J. 16; *The Times*, 10th December, 1936.

Lord Hewart, C.J., said that it appeared that the magistrate was of opinion that the present case was similar to *Stafford* v. *Kidd*, *supra*, but in his (his lordship's) opinion there was all the difference in the world between the two cases. In that case it was held that the execution of a deed of separation, together with evidence that the deed was acted upon by the parties, was sufficient to rebut the legal presumption of access. It had here been contended with success before the magistrate that for that purpose a mere order of maintenance was on the same footing as a deed of separation. It was clear that the two things were very different. All that was decided by *Stafford* v. *Kidd*, *supra*, as previously by other cases, was that the effect of a deed of separation, together with other evidence, was the same as the effect of a decree of separation. Here there was nothing but the fact that an order of maintenance was made which did not contain a condition that the respondent was no longer bound to cohabit with her husband. There was a long line of authorities, not merely *Russell* v. *Russell*, *supra*, to show that the step which the court was being invited to take was a very long one. The appeal must be allowed.

Branson and Humphreys, JJ., agreed.

Counsel: *Graham Brooks*, for appellant; *William Latey*, for respondent.

Solicitors: *Smith, Rundell, Dods & Bockett; Bell, Brodrick & Gray*, for *W. J. Canton*, Dowlais.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Books Received.

Wharton's Law Lexicon. Fourteenth Edition, 1938. By A. S. Oppé, of the Inner Temple, Barrister-at-Law. Crown 4to. pp. viii and 1081. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. £2 10s. net.

The Certified Accountants' Year Book. 1938. Crown 8vo. pp. (with Index) 699. London: The London Association of Certified Accountants, Ltd. 2s. 6d. net.

Gibson's Bankruptcy. Eleventh Edition. By Arthur Weldon and H. J. B. Cockshutt, Solicitors of the Supreme Court. 1938. Royal 8vo. pp. lvii and (with Index) 293. London: The "Law Notes" Publishing Offices. £1 net.

Monthly and Yearly Highest and Lowest Prices, with a Diary of Principal Events in 1937. (Uniform in size of page with Stock Exchange Ten-Year Record, 1937.) January, 1938, issue. pp. 16. London: Fredc. C. Mathieson & Sons. 2s. 6d. net.

1937 *Financial Notes*. December. London: Fredc. C. Mathieson & Sons. Issued monthly. Annual Subscription £1 1s.

CORRECTION.

In the notice of *Prideaux's Forms and Precedents in Conveyancing*, Twenty-third Edition, 1937, which appeared under "Books Received" in last week's issue, the price for the three volumes was inadvertently given as £3 3s. The correct price is £6 6s. net.

Rules and Orders.

The Housing Act, 1936 (Operation of Overcrowding Provisions) Order (No. 4), 1937, dated December 22, 1937, made by the Minister of Health under the Housing Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 51).

The Minister of Health, in exercise of his powers under Section 68 of the Housing Act, 1936 (hereinafter referred to as "the Act"), and of all other powers enabling him in that behalf, hereby makes the following Order:—

1. In relation to the areas which are specified in the Schedule to this Order the appointed day for the purposes of Section 62 of the Act (which provides for entry in rent books or similar documents of a summary in the prescribed form of certain provisions of the Act relating to overcrowding) shall be the first day of January, 1938, and the appointed day for the purposes of Sections 59 and 64 (which contain provisions as to offences in relation to overcrowding) and Section 60 and subsection (2) of Section 6 of the Act shall be the first day of July, 1938.

2. This Order may be cited as the Housing Act, 1936 (Operation of Overcrowding Provisions) Order (No. 4), 1937

SCHEDULE.

Areas to which this Order applies.

County Districts.

County of Chester.

Borough of:—Dukinfield.

County of Derby.

Borough of:—Ilkeston.

County of Monmouth.

Urban District of:—Pontypool.

County of Stafford.

Urban District of:—Tipton.

County of Anglesey.

Rural District of:—Valley.

County of Carmarthen.

Rural District of:—Newcastle Emlyn.

Given under the official seal of the Minister of Health this twenty-second day of December nineteen hundred and thirty-seven.

(L.S.) *R. Stanton*, Assistant Secretary, Ministry of Health.

Appeals and References under L.P. Acts.

I, Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain, by virtue of Order 54D of the Rules of the Supreme Court and of every other power enabling me in that behalf, hereby nominate The Honourable Mr. Justice Morton to be the single Judge to hear and determine such appeals under Order 54D as in pursuance of that Order are to be heard and determined by a single Judge of the Chancery Division, subject, however, to the power conferred upon me by the said Order to nominate in any particular instance another Judge of the Chancery Division for that purpose.

And I, the said Douglas McGarel Viscount Hailsham, hereby further nominate The Honourable Mr. Justice Morton and The Honourable Mr. Justice Luxmoore to be the two Judges of the Chancery Division constituting a Divisional Court for the purpose of hearing and determining such appeals under the said Order 54D as, in accordance with the provisions of that Order, are to be heard and determined by a Divisional Court of the Chancery Division, subject, however, to the power conferred on me by the said Order to nominate another Judge or Judges of that Division to be members of the said Divisional Court for the said purposes in any particular instances.

Dated the 11th day of January, 1938.

(Sgd.) *Hailsham*, C.

Bankruptcy Judges.

I, Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain, by virtue of section 57 of the Supreme Court of Judicature (Consolidation) Act, 1925, section 97 of the Bankruptcy Act, 1914, and all other powers enabling me in this behalf, Do hereby order that the jurisdiction of the High Court in bankruptcy shall be exercised by or under the direction of the Honourable Mr. Justice Luxmoore, the Honourable Mr. Justice Farwell and the Honourable Mr. Justice Morton, or one or more of them.

Dated the 11th day of January, 1938.

(Sgd.) *Hailsham*, C.

Societies.

Inner Temple.

GRAND DAY.

Wednesday, 19th January, being the Grand Day of Hilary Term, the Treasurer of the Inner Temple (Lord Hewart, Lord Chief Justice of England) and the Masters of the Bench entertained at dinner the following guests: The Earl of Strafford, General Viscount Gort, Viscount Hampden, Viscount Dunedin, Viscount Dawson of Penn, Lord Plender, Admiral of the Fleet Lord Chatfield, Lord Atkin, Lord Romer the Treasurer of the Middle Temple, Major the Hon. J. J. Astor, M.P., Sir Walford Davies, Sir Herbert Cunliffe, K.C., Sir Frederick Pascoe Rutter, the Master of the Temple, the Principal of Brasenose College (Dr. W. T. S. Stallybrass), the Warden of All Souls College (Professor W. G. S. Adams), Mr. Frank O. Salisbury, Dr. Geoffrey Evans, the Reader and the Sub-Treasurer. The following Masters of the Bench were also present: Sir Francis Taylor, K.C., Sir Sidney Rowlatt, Sir John Simon (Chancellor of the Exchequer), Mr. A. M. Langdon, K.C., His Honour A. W. Bairstow, K.C., Lord Roche, Sir Joseph Priestley, K.C., Mr. Alexander Grant, K.C., Lord Justice Scott, Mr. F. P. M. Schiller, K.C., Mr. Justice Charles, Mr. Justice Humphreys, Sir Thomas Inskip (Minister for the Co-ordination of Defence), Lord Justice MacKinnon, the Hon. Sir Evan Charteris, K.C., Lord Macmillan (honorary), Sir Wilfrid Greene (Master of the Rolls), Mr. R. F. Bayford, K.C., Sir Ernest Wingate-Saul, K.C., Mr. C. M. Pitman, K.C., Mr. Justice Bucknill, Sir Reginald Coventry, K.C., Mr. Justice Goddard, Mr. M. J. L. Beebee, Mr. S. R. C. Bosanquet, K.C., Mr. W. O. Willis, K.C., Mr. C. Paley Scott, K.C., the Archbishop of Canterbury (honorary), Mr. R. A. Gordon, K.C., Mr. Charles Doughty, K.C., Judge Cotes-Preedy, K.C., Mr. Justice Porter, Sir Donald Somervell, K.C. (Attorney-General), Mr. Roland Oliver, K.C., Mr. Justice Wrottesley, the Hon. Victor Russell, Mr. R. P. Hills, Mr. R. P. Croom-Johnson, K.C., Mr. N. B. Goldie, K.C., Mr. Arthur Moon, K.C., Sir Terence O'Connor, K.C. (Solicitor-General), and Sir Walter Monckton, K.C.

United Law Society.

At a meeting of the United Law Society, held in the Middle Temple Common Room, on Monday, 17th January (Mr. R. E. Ball in the chair), Mr. C. F. Walker proposed: "That the work of the Probate, Divorce and Admiralty Division be transferred to the other Divisions of the High Court." Mr. P. Proud opposed. Messrs. G. C. Rafferty, G. B. Burke, D. L. Taylor, R. J. Kent, E. D. Smith and K. W. F. Herbertson also spoke. The motion was lost by two votes.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room on Tuesday, 11th January (Chairman, Mr. P. H. North Lewis), the subject for debate was "That in the opinion of this House the Reformation was a religious, political, and social disaster." Mr. B. W. Main opened in the affirmative; Mr. A. T. Wilson opened in the negative. The following members also spoke: Messrs. L. E. Long, M. Foulis, J. R. Campbell Carter, G. Roberts, E. V. E. White, J. E. Terry, W. M. Pleadwell and Miss U. Hastie. The opener having replied, the motion was lost by three votes. There were twenty-one members and one visitor present.

At a meeting of the Society held at The Law Society's Court Room on Tuesday, 18th January (Chairman, Mr. B. W. Main), the subject for debate was "That this House deplores the decision of the House of Lords in the case of *Thorne* v. *Motor Trade Association* [1937] A.C. 797." Mr. R. Morgan opened in the affirmative. Mr. K. J. T. Elphinstone opened in the negative. Mr. J. Smith seconded in the affirmative. Mr. W. H. Stevens seconded in the negative. The following members also spoke: Messrs. A. D. Scholes, M. C. Green, G. A. Russo, L. E. Long, J. H. Shaw, J. R. Campbell Carter, C. A. G. Simkins, A. T. Wilson, A. Doggett, A. C. Dowding, H. J. Dowding, W. M. Pleadwell, Q. B. Hurst. The opener having replied, and the Chairman having summed up, the motion was lost by four votes. There were twenty-three members and three visitors present.

Dr. Ernst Cohn will read a paper before the Grotius Society on "The Unification of the Law of Commercial Arbitration as proposed by the Rome Institute," at 2 King's Bench Walk, Temple, E.C.4, on Thursday, 27th January, at 4.30 p.m.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve that Lord Justice Clauson be sworn of His Majesty's most honourable Privy Council on his appointment as a Lord Justice of Appeal; and that the honour of knighthood be conferred upon Mr. Justice Morton on his appointment as a Justice of the High Court of Justice.

The King has appointed Mr. C. H. BROWN, K.C., Sheriff of the Lothians and Peebles, to be also the Sheriff of Chancery.

President Roosevelt has nominated Mr. STANLEY REED, Solicitor-General since 1935, to be a Judge of the Supreme Court of the United States, in succession to Mr. Justice Sutherland, whose retirement was recently announced. Mr. Reed was admitted to the Bar in 1910.

The Lords Commissioners of his Majesty's Treasury have appointed Mr. GEORGE MALCOLM YOUNG, C.B., to be a member of the Standing Commission on Museums and Galleries, in the vacancy caused by the appointment of the Hon. Sir EVAN CHARTERIS, K.C., to the chairmanship of the Commission.

Mr. PHILIP B. DINGLE, LL.M., at present Senior Assistant Solicitor to the Sheffield Corporation, has accepted an appointment in a similar position to the Manchester Corporation. He will start work in Manchester at the beginning of February. Mr. Dingle was admitted a solicitor in 1928.

Mr. W. W. RUFF, Temporary Assistant Solicitor at Scarborough, has been appointed Assistant Solicitor to the Heston and Isleworth Corporation. Mr. Ruff was admitted a solicitor in 1937.

At a Court of Governors of the Royal Hospitals of Bridewell and Bethlem, last Monday, Mr. JOHN A. T. BARSTOW, a partner in the firm of Messrs. Trower, Still and Keeling, of 5 New Square, W.C., was appointed solicitor to the hospitals in succession to the late Mr. F. Churchill Still. Mr. Barstow was admitted a solicitor in 1932.

Professional Announcements.

(2s. per line.)

WOOD, SONS & DALE, of 149 and 151, High Street, Wanstead, E.11, announce that ARTHUR HERBERT WOOD, DOUGLASS MATHEWS, FRANCIS EDMUND WOODS, ARTHUR DENIS WOOD and FREDERICK COLIN DEAN WOOD retired from the firm on the 1st day of January, 1938, and the practice will be carried on by the remaining partners RAYNARD WILLIAM DALE and RICHARD KELSEY STEVENS under the present style. The retiring partners, with JOHN BIDDULPH PINCHARD, will continue to carry on their present practices at 1, St. Andrew's Hill, E.C.4, and 18, High Street, Beckenham, Kent, under the present style of WOOD & SONS.

Notes.

A notice of the death on the 14th January at Walthamstow of Mr. Thomas Henry Penwarden, for over forty-four years in the service of Messrs. Linklaters and Paines of 2 Bond Court, Walbrook, E.C.4, appeared in *The Times* last Monday.

There will be a distinguished company as guests of the Glasgow University Law Society at its annual dinner on Friday, 28th January, in the University Union. Lord Aitchison, Lord Wark, Sheriff Principal Sir Archibald Campbell Black, and Mr. Hugh R. Buchanan have been invited to attend.

The library of the late Mr. John S. Ewart, K.C., of Ottawa, for many years a leader of the Canadian Bar, has been presented by his son, Mr. T. S. Ewart, to the Government of Manitoba. It consists of 6,000 items chiefly books, pamphlets, documents and manuscript dealing mainly with historical and constitutional matters.

Mr. Robert L. Hunter, of Messrs. Hunters, is relinquishing his seat on the board of the Guardian Assurance Company after twenty-five years' continuous service, and his partner, Mr. H. M. Clowes, has been appointed a director of the company in his stead. Mr. P. Beaumont Frere, of Messrs. Frere, Cholmeley and Co., has been appointed a director of the Guardian Assurance Company.

Miss H. Thompson, who is eighty-three, resigned from the Workington Bench last Wednesday, says *The Times*. She was appointed to the Bench thirteen years ago. Mr. Tom Cape, M.P., read a letter from the Lord Chancellor in which he expressed his appreciation of Miss Thompson's strong sense of public duty in voluntarily resigning the duties which she found herself no longer able adequately to perform.

The Directors of the Midland Bank Limited report, that full provision having been made for all bad and doubtful debts, the net profits for the year ended 31st December, 1937 amounted to £2,508,009 4s. 2d., to which has to be added the balance of £547,084 4s. 6d., brought forward from last account, making together a total sum of £3,055,093 8s. 8d., out of which appropriations amounting to £1,554,880 14s. 4d. have been made, leaving a sum of £1,500,212 14s. 4d. from which the directors recommend a dividend payable 1st February, 1938, for the half-year ended 31st December, 1937, at the rate of 16 per cent. per annum, less income tax, and a balance to be carried forward of £591,044 1s. 2d.

The Annual Statistical Report relating to new companies registered in England during the year ended 31st December, 1937, has just been published by Messrs. Jordan & Sons, Limited, Company Registration Agents, Chancery Lane, London. The figures show some slight falling off, as compared with 1936. There is a recession of 1,020 in the total number (approximately 7 per cent.) and of £44,000,000 or 27 per cent. in the total nominal capital. It should be remembered, however, that in the year 1936 the number of companies registered (13,742) rose to a peak which had never before been reached. The total companies registered last year, 12,722, is the third highest number ever registered in any one year.

TITHE ACT, 1936.

REMISSION OF REDEMPTION ANNUITIES.

Section 14 of the Tithe Act, 1936, enables landowners to obtain a remission of redemption annuities in excess of one-third of the annual value for income tax purposes under Sched. B of the lands in respect of which the annuities are charged.

It is, however, an essential condition that application for a certificate of Sched. B annual value shall be made in the prescribed form *before the first day of March* in any year for which remission is claimed.

A fresh application has to be made every year, and it is important that landowners who may be affected should note that *the Tithe Redemption Commission will not be able to allow remission in respect of the half-yearly instalments of annuities that will be payable on 1st April and 1st October, 1938, in any case where there has been failure, for whatever reason, to make application for a certificate of annual value before 1st March*, 1938.

The application for such a certificate must be made to the inspector of taxes for the parish in which the land concerned is assessed or situate, who will supply the necessary forms on request. A separate application must be made in respect of each agricultural holding. The expression "agricultural holding" means, broadly, land in the ownership of a single owner which is, or is usually, occupied or farmed as a single unit, or, in the case of land used for a plantation or wood or for the growth of saleable underwood, managed as a single unit.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP II. MR. JUSTICE CLAUSON. Witness. Part II.	GROUP II. MR. JUSTICE LUXMOORE. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Jan. 24	Ritchie	Hicks Beach	*Ritchie	*Jones
,, 25	Blaker	Andrews	*Blaker	*Ritchie
,, 26	More	Jones	*More	*Blaker
,, 27	Hicks Beach	Ritchie	*Hicks Beach	More
,, 28	Andrews	Blaker	*Andrews	Hicks Beach
,, 29	Jones	More	Jones	Andrews

DATE.	GROUP II. MR. JUSTICE FARWELL. Non-Witness.	MR. JUSTICE BENNETT. Witness. Part I.	GROUP I. MR. JUSTICE CROSSMAN. Witness. Part II.	MR. JUSTICE SIMONDS. Non- Witness.
	Mr.	Mr.	Mr.	Mr.
Jan. 24	Blaker	*More	Hicks Beach	Andrews
,, 25	More	*Hicks Beach	Andrews	Jones
,, 26	Hicks Beach	*Andrews	Jones	Ritchie
,, 27	Andrews	*Jones	Ritchie	Blaker
,, 28	Jones	*Ritchie	Blaker	More
,, 29	Ritchie	Blaker	More	Hicks Beach

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 10th February 1938.

	Div. Months.	Middle Price 19 Jan. 1938.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	110	3 12 9	3 5 8
Consols 2½%	JAJO	76	3 5 9	—
War Loan 3½% 1952 or after ...	JD	102½	3 8 4	3 5 8
Funding 4% Loan 1960-90	MN	114	3 10 2	3 2 3
Funding 3% Loan 1959-69	AO	99	3 0 7	3 1 0
Funding 2½% Loan 1952-57	JD	95½	2 17 7	3 1 3
Funding 2½% Loan 1956-61	AO	90½	2 15 3	3 1 8
Victory 4% Loan Av. life 22 years ...	MS	112	3 11 5	3 4 7
Conversion 5% Loan 1944-64 ...	MN	115	4 6 11	2 5 10
Conversion 4½% Loan 1940-44 ...	JJ	106⅝	4 4 4	2 3 11
Conversion 3½% Loan 1961 or after	AO	103½	3 7 8	3 5 7
Conversion 3% Loan 1948-53 ...	MS	102½	2 18 8	2 14 10
Conversion 2½% Loan 1944-49 ...	AO	98¾	2 10 7	2 12 9
Local Loans 3% Stock 1912 or after	JAJO	88½	3 7 10	—
Bank Stock	AO	344½	3 9 7	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	80	3 8 9	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	88	3 8 2	—
India 4½% 1950-55	MN	112½	4 0 0	3 4 6
India 3½% 1931 or after	JAJO	93½	3 14 10	—
India 3% 1948 or after	JAJO	80½	3 14 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	109½	4 2 2	3 18 5
Sudan 4% 1974 Red. in part after 1950	MN	107½	3 14 5	3 5 8
Tanganyika 4% Guaranteed 1951-71	FA	107½	3 14 5	3 5 8
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	106	4 4 11	2 17 9
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	90	2 15 7	3 4 10
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	105	3 16 2	3 12 1
Australia (Commonw'th) 3% 1955-58	AO	90	3 6 8	3 13 9
*Canada 4% 1953-58	MS	109	3 13 5	3 5 5
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 3
New South Wales 3½% 1930-50 ...	JJ	98	3 11 5	3 14 2
New Zealand 3% 1945	AO	97	3 1 10	3 9 10
Nigeria 4% 1963	AO	108	3 14 1	3 10 6
Queensland 3½% 1950-70	JJ	97	3 12 2	3 13 2
*South Africa 3½% 1953-73	JD	103	3 8 0	3 4 10
Victoria 3½% 1929-49	AO	99	3 10 8	3 12 1
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	86	3 9 9	—
Croydon 3% 1940-60	AO	96	3 2 6	3 5 2
*Essex County 3½% 1952-72 ...	JD	101	3 9 4	3 8 4
Leeds 3% 1927 or after	JJ	84	3 11 5	—
Liverpool 3½% Redeemable by agreement with holders or by purchase...	JAJO	101	3 9 4	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	72	3 9 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	86¼	3 9 4	—
Manchester 3% 1941 or after ...	FA	85	3 10 7	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	97½	2 11 3	2 15 0
Metropolitan Water Board 3% "A" 1963-2003	AO	88½	3 7 10	3 8 11
Do. do. 3% "B" 1934-2003 ...	MS	90	3 6 8	3 7 7
Do. do. 3% "E" 1953-73 ...	JJ	96	3 2 6	3 3 10
*Middlesex County Council 4% 1952-72	MN	107	3 14 9	3 7 11
* Do. do. 4½% 1950-70	MN	113	3 19 8	3 5 3
Nottingham 3% Irredeemable ...	MN	85	3 10 7	—
Sheffield Corp. 3½% 1968	JJ	101	3 9 4	3 8 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	109½	3 13 1	—
Gt. Western Rly. 4½% Debenture ...	JJ	117½	3 16 7	—
Gt. Western Rly. 5% Debenture ...	JJ	129½	3 17 3	—
Gt. Western Rly. 5% Rent Charge ...	FA	126½	3 19 1	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	127	3 18 9	—
Gt. Western Rly. 5% Preference ...	MA	117½	4 5 1	—
Southern Rly. 4% Debenture ...	JJ	108	3 14 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	106½	3 15 1	3 11 9
Southern Rly. 5% Guaranteed ...	MA	127	3 18 9	—
Southern Rly. 5% Preference ...	MA	114½	4 7 4	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.